आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.2394 & 2393/PUN/2024
निर्धारण वर्ष / Assessment Year : 2017-18

M/s. Manilal P. Savla & Company, 24, Bhawani Peth, Pune-411042 PAN : AABFM9782A	**Vs.**	ACIT, Circle-5, Pune
अपीलार्थी / Appellant		**प्रत्यर्थी / Respondent**

Assessee by :	Shri M.R. Bhagwat
Department by :	Shri Vidya Ratan Kishore
Date of hearing :	03-09-2025
Date of Pronouncement :	24-11-2025

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The above two appeals filed by the assessee are directed against the separate orders both dated 27.09.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi **["CIT(A)"/"NFAC"]** pertaining to Assessment Year **("AY")** 2017-18. For the sake of convenience, both these appeals were heard together and are being disposed of by this common order.

ITA No. 2394/PUN/2024, AY 2017-18

2. Briefly stated, the facts are that the assessee is a firm. For AY 2017-18, the assessee has not filed its return of income. The assessee firm stopped filing its return of income from AY 2013-14 onwards, as the firm got dissolved on 31.08.2012. Based on the information received from the office of the Dy. Commissioner of Income Tax, Central Circle-1(1), Pune that a search and seizure action was conducted u/s 132 of the Income Tax Act, 1961 **(the "Act")** in the case of Shri Sachin M. Nahar on 01.08.2017 wherein certain documents were found and seized based on which he admitted that Manilal P Savla & Company (the assessee) had given cash loans through Sachin M. Nahar to various parties to the extent of Rs.56,50,000/-, the source of which has not been unexplained and not disclosed in the return of income as no return was

filed by the assessee for AY 2017-18. After recording the reasons for reopening the case of the assessee u/s 147 of the Act and obtaining the requisite approval, the Ld. Assessing Officer (**"AO**") issued notice u/s 148 of the Act on 31.03.2021 which was duly served upon the assessee electronically. The assessee was asked to file its return of income for AY 2017-18 in the said notice issued u/s 148 of the Act. The assessee was then issued and served with notice u/s 142(1) of the Act on 15.12.2021 and 07.03.2022 requesting therein to file income tax return for AY 2017-18 with proper supporting documents in support of its return and to furnish copy of all bank statements for FY 2016-17. In response thereto, the assessee filed its reply electronically on 29.01.2022 and submitted a copy of dissolution deed. The assessee in its reply (reproduced in para 6 of the assessment order) submitted that intimation of dissolution of firm has already been made to the Department on 25.04.2013. Thereafter, the Ld. AO issued a show cause notice on 24.03.2022 requesting the assessee to show cause as to why the amount of Rs.56,50,000/- may not be treated as unexplained cash hitherto undisclosed for AY 2017-18 u/s 69A r.w.s. 115BBE of the Act. Since the assessee did not furnish reply to the said show cause notice, the Ld. AO proceeded to complete the assessment u/s 144 r.w.s. 147 of the Act on total income of Rs.56,50,000/- by making an addition of Rs.56,50,000/- u/s 69A of the Act vide order dated 30.03.2022 by observing as under :

> *"07. As per section 189 of the Income tax Act, 1961.*
>
> *Section 189 read as under:-*
>
> *"Section 189(1)-Firm dissolved or business discontinued Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the (Assessing Officer) shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.*
>
> *Section 189(2)....."*
>
> *08. Further, show cause notices dated 24.03.2022 was issued and duly served to assessee electronically through e proceedings. In the show cause it was informed to the assessee, 'intimation of dissolution of the entity needs to be submitted to the Department within 15 days of such dissolution, in your case, the same was intimated after 237 days of dissolution. Further, the assessee firm has carried out the afore-mentioned transaction(s) after closure of business activities. In such a scenario, provisions of section 189 of the Income-tax Act, 1961 needs to be invoked and liability of tax, penalty, etc. needs to be borne by the partner(s) of the at the time of dissolution.". In view of above, assessee was requested to show cause as to why the amount of Rs. 56,50,000/- may not be treated as unexplained cash hitherto undisclosed for A.Y. 2017-18 u/s 69A r.w.s.115BBE of the Income Tax Act 1961.*

09. On perusal of records from ITBA/E-proceedings (Systems), it is noticed that the assessee has not furnished any submission thereof till date. Therefore, the undersigned is proceeding further as per material available on records.

10. Subject of the above, total income of the assessee is computed as under:

Computation of Income

Sr. No.	*Particulars*	*Amount (in Rs.)*
1	*Total income as per return of income*	*Non filer*
2	*Addition: As discussed in para 3*	*56,50,000/-*
3	*Total Income assessed u/s 144 r.w.s.147*	*56,50,000/-*

3. Aggrieved, the assessee carried the matter before the Ld. CIT(A)/NFAC challenging the above addition of Rs.56,50,000/- made u/s 69A of the Act by the Ld. AO and also raised an additional ground before the Ld. CIT(A)/NFAC that *"the reassessment order u/s 147 is without jurisdiction and bad in law because the assessing officer has wrongly invoked the provisions of section 189 which do not copower him to assess any income arising post dissolution of the firm"*. The Ld. CIT(A)/NFAC dismissed the appeal of the assessee including the additional ground raised before him by observing as under :

"5.2 Briefly, the facts of the case are that on verification of case records, it was noticed that the appellant is a partnership firm which was once a time carrying-on business of dealing in edible oils. The firm was dissolved on 31.08.2012 by executing Dissolution deed. A Search and Seizure action was conducted u/s 132 of the Act in the case of Shri Sachin M. Nahar on 01.08.2017 wherein certain documents were found and seized based on which he admitted that MANILAL P SAVLA AND COMPANY had given loans through Sachin M. Nahar to various parties to the extent of Rs.56,50,000/-. Therefore, the case of the appellant was reopened u/s 147 of the act by issuing notice u/s 148 of the Act. During the course of assessment proceedings, the appellant has contended that the firm was dissolved on 31.08.2012 and has not carried any business since then. The AO considered the submissions of the appellant but found not acceptable as the appellant firm has not intimated the dissolution within 15 days of such dissolution. Therefore, the AO invoked the provisions of Section 69A r.w.s 115BBE of the Act and made addition of Rs.56,50,000/- to the returned income.

5.3. The addition made by the AO and the submissions of the appellant have been perused. It is seen from the assessment order that the appellant had given cash loans through Sachin M. Nahar to various parties to the extent of Rs.56,50,000/-. The fact has been admitted by Sachin M. Nahar during the course of search and seizure proceedings. The appellant firm further has not intimated the dissolution of the firm to the Department within 15 days of such dissolution. The appellant contention that the firm has been dissolved on 31.08.2012 does not absolve the appellant from the liability.

5.4. The appellant raised in the additional grounds of appeal that the reassessment order u/s 147 is without jurisdiction and bad in law because the assessing officer has wrongly invoked the provisions of section 189 which do not copower him to assess any income arising post dissolution of the firm. The appellant places reliance on decision of the Hon'ble ITAT in the case of M/s Mantri Developers VS DCII. The contention of the appellant cannot be accepted since Sri Sachin M. Nahar during the search and seizure proceedings had admitted that the firm had given cash loans to the extent of Rs 66,50,000/. As p cash loans to the extent of Rs 66,50,000/-. As per Section 189 of the IT Act, where any business siness or profession carried on by a firm has been

discontinued or where a firm is dissolved, the AQ shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place. In the instant case, although the firm under consideration was dissolved as on date of assessment, the firm has carried out the transactions by advancing cash loans to the tune of Rs.56,50,000/-.

5.5. Considering the facts and circumstances of the case and following the above decision, the contention raised by the appellant is not acceptable and the ground of appeal no.2 raised in this regard is dismissed.

5.6. The additional grounds of appeal raised by the appellant is with regard to re-opening of assessment. The reasons have been recorded by the AO for escapement of income and the case was re-opened u/s 147. Notices u/s 148 and 142(1) were served on the appellant. Hence, the grounds raised by the appellant is void of any merit and the additional grounds raised by the appellant are dismissed."

4. Dissatisfied, the assessee is in appeal before the Tribunal raising the following grounds of appeal :

"1) The learned CIT(A), NFAC, DELHI has erred in sustaining the validity of the reassessment where it was without jurisdiction and bad in law because the assessing officer had wrongly invoked the provisions of section 189 which do not empower him to assess any income arising post dissolution of the firm.

2) The learned CIT(A), NFAC, DELHI has erred in sustaining the validity of the reassessment where it was

a) Solely based on third party evidence collected behind assessee's back and

b) against the principles of natural justice

3) The learned CIT(A), NFAC, DELHI has erred in confirming the addition of Rs.56,50,000/- under section 69A.

4) The reassessment may be cancelled.

5) The addition of Rs.56,50,000/- be deleted and the appellant's total income be reduced to that extent.

6) Such other orders be passed as deemed fit and proper.

7) The appellant prays for leave to add to, modify or amend its grounds of appeal and lead evidence.

5. The Ld. AR submitted that the fact of dissolution of the assessee firm was duly intimated to the Ld. AO which he records in para 6 of the assessment order. He submitted that the assessee's reliance on the decision of the Jurisdictional Tribunal in the case of M/s. Mantri Developers Vs. Income Tax Officer in ITA No. 1053/PUN/2013, dated 19.12.2014 in support of the additional ground raised by the assessee has been rejected by the Ld. CIT(A)/NFAC. Drawing support from the said decision, the Ld. AR submitted that the reassessment order is without jurisdiction and bad in law because the

Ld. AO has invoked the provisions of section 189 of the Act which do not empower him to assess any income arising post dissolution of the firm. The Ld. CIT(A)/NFAC rejected this contention of the assessee for the reason that the assessee firm has carried out the transactions by advancing cash loans to the tune of Rs.56,50,000/- although the firm was dissolved as on the date of assessment and hence the Ld. AO was completely unjustified in invoking the provisions of section 189 of the Act. This observation of the Ld. CIT(A)/NFAC is unsustainable in law.

5.1 The Ld. AR further submitted that in respect of the alleged cash transaction of Rs.56,50,000/-, the Ld. AO has not brought on record any evidence to show that the transaction had actually taken place except the statement of a third party recorded during the course of searched person. He therefore contended that both the Ld. AO as well as the ld. CIT(A)/NFAC have failed to bring on record any transaction details in respect of the impugned addition.

5.2 On being directed by this Bench to produce additional evidence regarding dissolution of the assessee firm with particular reference to the bank accounts operated by the firm, the Ld. AR made the following submissions on behalf of the assessee :

> *"1] The firm was dissolved by a Deed of Dissolution dated 31 August 2012 whose copy is already placed on record in the paper book.*
>
> *2] The firm-maintained current accounts with following banks during the course of its existence :-*
>
> *i) Pune Peoples Co-op Bank Ltd Laxmi Road Branch account no.100210041002502. The firm closed this account on 14/02/2011 as per bank's certificate enclosed.*
>
> *ii) Vidya Sahakari Bank Ltd. Current account no.201204180000100, The account remained to be closed because of the death of the working partners Mr. Arvind P. Savala on 29/10/2012 and Mr. Dheeraj P. Savala on 01/10/2013 respectively after the dissolution on 31 August 2012. The account has been classified as inoperative account by the bank since the last transaction of Rs.8000/- on 29/04/2013. The bank finally closed the account unilaterally on 30/06/2020 and the statement is enclosed. Your Honors may note that there are no transactions in the account after 29/04/2013, The appellant is also attaching the death certificates of both the partners.*
>
> *iii) Canara Bank Current account no. 6584: The firm filed its last return of income for assessment year 2013-2014 on 23/07/2013. This account was mentioned in the return form but despite their best efforts the surviving partners have not been able to locate any old record pertaining to such account. Therefore, it appears that the same was also probably closed at the time of the dissolution of the firm. The bank's confirmation about non existence of such an account is enclosed.*

Besides the above the firm had informed about its dissolution to the following Government authorities:

1) *Assessing officer Ward 5(3) Pune. Copy already placed on record in assessee's paper book.*
2) *Registrar of Firms*
3) *Food Distribution officer, Government of Maharashtra.*
4) *Shop and Establishment Department, Government of Maharashtra."*

5.3 Relying on the decision of the Tribunal in the case of M/s. Mantri Developers (supra), the Ld. AR submitted that the case of the assessee is squarely covered by this decision. The Ld. CIT(A)/NFAC has grossly erred in confirming the action of the Ld. AO in applying the provisions of section 189 of the Act and upholding the impugned assessment order in case of a dissolved firm for the relevant AY 2017-18 i.e. post dissolution when the firm is not even in existence.

6. The Ld. DR, on the other hand, strongly supported the order of the Ld. AO and the Ld. CIT(A)/NFAC.

7. We have heard the Ld. Representatives of the parties and perused the material available on record as well as the paper book filed by the Ld. AR on behalf of the assessee. We have also perused the judicial precedent cited by the Ld. AR before us. The facts of the case are not in dispute. We find that the Ld. AO made an addition of Rs.56,50,000/- u/s 69A of the Act on account of alleged cash transaction undertaken by the assessee firm under the reassessment proceedings vide his order u/s 147 r.w.s. 144 of the Act based on the statement of one Shri Sachin M. Nahar recorded during the course of search on the said person The Ld. CIT(A)/NFAC has upheld the action of the Ld. AO for the reasons recorded in the preceding paragraphs. The facts on record shows that the assessee firm was dissolved by the deed of dissolution dated 31.08.2012, a copy of which has been placed at pages 1 to 5 of the paper book and the same was filed before the Ld. AO on 25.04.2013 as recorded by the Ld. AO himself in para 6 of the assessment order. From page 6 of the paper book, it is also seen that the assessee had made an application before the Ld. AO requesting him to provide the assessee with a copy of the statement recorded at the time of search of Shri Sachin M. Nahar. However, the Ld. AR has claimed that the Ld. AO did not furnish the same to the assessee and proceeded to complete the assessment for AY 2017-18 making the impugned

addition in the hands of the assessee. Perusal of the order of the Ld. AO as well as Ld. CIT(A)/NFAC also reveals that no evidence has been brought on record by the Department in respect of the alleged cash loan transaction of Rs.56,50,000/- taken place between the parties. Having said so, the fact remains that the assessee firm was dissolved on 31.08.2012 which was already known to the Ld. AO at the time of initiating the reassessment proceedings as well as passing of the impugned assessment order. Before us, the Ld. AR has stated that the assessee firm has not carried out any business transaction post dissolution of the firm. As per the direction of this Bench, the Ld. AR has also filed further details specifically regarding the bank accounts operated by the firm during the course of its existence and post dissolution of the firm, which is reproduced in para 5.2 above. From these submissions, we find that the various accounts operated by the assessee firm has either been closed or become inoperative post dissolution of the firm. The Ld. Counsel for the assessee has submitted that the assessee has also intimated regarding the dissolution of the firm to the concerned Government authorities i.e. Registrar of the Firms, Food Distribution Officer, Government of Maharashtra and Shop and Establishment Department, Government of Maharashtra.

8. We find that the Co-ordinate Bench of the Tribunal in the case of M/s. Mantri Developers (supra) under the identical set of facts quashed the proceedings initiated u/s 147 of the Act and cancelled the assessment framed by the Ld. AO and upheld by the Ld. CIT(A) in turn relying on the various decisions on the impugned issue. The relevant observation and findings of the Tribunal in Mantri Developer's case is reproduced below :

> *"5. The issue of legality and validity of the assessment proceedings initiated against the assessee firm u/s. 147 is a legal issue which goes to the root of matter hence, we proceed to decide the same. Ld. Counsel submits that the assessee firm was lastly assessed for the A.Y. 2002-03 and thereafter there is no assessment nor any return of income was filed by the assessee firm. He submits that after the dissolution of the firm on 31-03-2002, the necessary intimation was sent to the Registrar of the firm and Registrar of the firm, Pune made the required changes in it's record. He referred to Page No. 3 of the Compilation where the copy of the extract of the register of the firm is placed. He also referred to Page No. 6 where the copy of the acknowledgment of the return of the assessee firm for the A.Y. 2002-03 is placed. He submits that the assessee filed its last return for the A.Y. 2002-03 and thereafter no returns are filed as the assessee firm was dissolved. He submits that the provisions of Sec. 189(1) cannot be applied in situation where the firm has been dissolved and business is also discontinued and the said provision only can be applied in respect of the transaction or income during the existence of the firm. He submits that the decision relied on by the Ld. Commissioner are totally misplaced as in those cases the income were pertaining to the period during which those firms were in existence and income was received subsequent to the dissolution of those firms. He argues that Sec. 189(1) creates fiction but it has a limited application and the said provision cannot be interpreted*

to bring to tax even the transactions which are allegedly took place after the dissolution of the firms and discontinuance of the business. The Ld. Counsel relied on the following decisions in support of his plea.

i. CIT Vs. Bhagat & C0. 182 ITR 212 (del.).
ii. ii. George Talkies Circuit Vs. CIT 171 ITR 386 (Raj.).
iii. iii. Banyan & Berry Vs. CIT 222 ITR 831(Raj.).

6. He submits that the proceedings initiated by the Assessing Officer and issuance notice u/s. 148 of the Act to the assessee for the A.Y. 2004-05 are totally bad in law and have to be cancelled. He pleaded for cancelling the notice issued by the Assessing Officer u/s. 148 to the assessee for the A.Y. 2004-05. Per contra, the Ld. DR for the Revenue submits that the Assessing Officer has taken right action as during the course of search and seizure action against Shri Sohanraj Mehta, C&F of RMD Gutka Group the documents were seized from which it was revealed that the assessee firm was paid Rs.1.5 Crores in December, 2003. He argues that there is no bar to take action against the assessee firm as the Assessing Officer' action is protected by Sec. 189(1) of Income-tax Act even if the assessee firm was dissolved on 31-03-2002. He placed his heavy reliance on the decision of the Hon'ble High Court of Bombay in the case of Hemendra Ranchhoddas Merchant, Mumbai Vs. Director of Income Tax (INV), Mumbai & Ors. 351 ITR 206 (Bom.).

7. We have heard the rival submissions of the parties and also perused the record. As per the facts stated here-in-above, there was search and seizure action against one Shri Sohanraj Mehta, C&F of RMD Gutka Group. During the course of search and seizure action some documents were seized from which it was revealed that in the month of December, 2003 (Page No. 11 of the Compilation) a sum of Rs.1.5 Crores was shown to have been paid to "Shri Mantri Developers, Pune". As per the documentary evidence on record there is no dispute about the fact that the proceedings u/s. 147 was initiated on the basis of the said seized documents which disclosed the alleged payment of Rs.1.5 Crores to one Shri Mantri Developers, Pune. The assessee has filed the Compilation in which the copies of reply given to the Assessing Officer from time to time are also placed. It is seen that after receipt of the notice from the Assessing Officer, the assessee informed that the assessee firm has been dissolved w.e.f. 31-03-2002 and all necessary formalities for closure are completed (Page No. 16 of the Compilation). The assessee informed to the Assessing Officer that since the assessee firm is not in existence in A.Y. 2004-05 there is no reason to initiate the action against the assessee. The assessee again filed the reply on 17-11- 2011 which was in respect of the notices issued u/s. 142(1) and 148 of the I.T. Act reiterating the stand that the assessee firm got dissolved w.e.f. 31-03-2002 and they have completed all necessary formalities including the copy of dissolution deed was sent to Assistant Registrar of the firms and due entry was also made in the register of the Assistant Registrar of the Firm, Pune. It appears that the return of income was filed on behalf of the assessee for the A.Y. 2004-05 on 12-04-2011 (Copy at Page No. 5 of the Compilation) declaring Nil income. The assessee has also filed the copy of the seized documents on the basis of which the assessee was issued the notice u/s. 148 of the Act (Page Nos. 9 to 11 of the Compilation).

8. In this case the Assessing Officer has completed the assessment rejecting all the contentions of the assessee and completed the assessment u/s. 144 r.w.s. 147 of the I.T. Act, bringing to tax of Rs.1.5 Crores as an unexplained income of the assessee for the A.Y. 2004-05. The contention of the assessee is that in December, 2003, when the alleged transaction was found recorded on the loose sheets from Shri Sohanraj Mehta during the course of search and seizure action u/s. 132(1) of the Act, at that time the assessee firm was not in existence at all and business was also discontinued. As per the documents filed by the assessee more particularly the extract from the register of the firm from the office of Assistant Registrar of the Firm, Pune (Page No. 3 of the Compilation), it is seen that the Assistant Registrar has made the changes in its record by passing the entry on 16-06-2003 by making the endorsement that the assessee firm has been dissolved on 31-03-2002. We also find that the assessee has taken a consistent

stand before the Assessing Officer as well as before the Ld. CIT(A) that after the A.Y. 2002-03, no business was carried out nor any return of income was filed. The Revenue also could not controvert the said factual submissions made by the assessee in the open Court. As per the evidence placed before us and on the facts, we hold that the assessee has proved that the assessee firm has been dissolved on 31-03-2002 and no business was carried out after it's dissolution.

9. Now, the next question is whether Sec. 189(1) empowers the Assessing Officer to bring to tax any income arising out of any transaction when the firm was not in existence and no business was carried out. The relevant part of Sec. 189(1) reads as under:

> *"189. (1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment."*
>
> *(2). ……..*
>
> *(3). ……..*

10. In the opinion of the Ld. CIT(A) the bare reading of Sec. 189(1) would show that the said provisions are attracted where any business or profession carried on by a firm has been discontinued or where a firm is dissolved. The Ld. CIT(A) has relied on following precedents to support his above view:

i. CIT Vs. Mangat Ram Hazarimal Kuthiala 125 ITR 91 (P & H).

ii. Nagarmal Baijnath Vs. CIT 201 ITR 538 (SC)

iii. CIT Vs. Raja Reddy Mallaram 51 ITR 285 (SC).

iv. CIT Vs. Star Andheri Estate 208 ITR 573 (Bom.)

v. CIT Vs. Paily Pillai & Co. 243 ITR 557 (Ker.)

11. In the case of CIT Vs. Mangat Ram Hazarimal Kuthiala (supra), the issue was in respect of penalty imposed u/s. 271(1)(a) of the Income-tax Act. In the said case, as per the facts on record, the assessee firm carried on the business of exploitation of forests and sale of timber. The accounts were closed on 30th June of each year. There were two partners in the said firm. On 30-05-1958, Shri Mangat Ram Kuthiala, passed away and hence, the firm was dissolved. By agreement dated 07- 06-1958 the surviving partner of the dissolved firm transferred all the rights and interest in the firm to other parties and subsequently the surviving partner also died in September, 1960. A notice u/s. 22(2) of the I.T. Act, 1922 was issued in the name of the assessee firm which was served on Shri Radhakishan, who had taken over the business of the assessee firm. There was a delay in filing the return of income of dissolved firm for the A.Y. 1959-60 and hence, the penalty was levied. It is clear from the facts on record that the issue of penalty was in respect of assessment year during which the assessee firm was in existence and return was not filed in time by the persons who had taken over the business of firm and continued the business.

12. In the case of Nagarmal Baijnath (supra) the following substantial question of law was before the Hon'ble Supreme Court – "whether, on the facts and in the circumstances of the case, the income tax assessments for the years 1946-47 and 1947-48 and excess profits tax assessments for the chargeable accounting periods ending November 4, 1945, and March 31, 1946, made on Messrs. Nagarmal Baijnath, a firm, which was dissolved and whose business was discontinued at the time of the assessments, were validly made?" The said assessee firm did business during the accounting years relevant to the A.Ys.

1946-47 and 1947-48. The said firm was dissolved by a deed of dissolution dated 02-12-1946 and it's business was discontinued. The Assessing Officer issued the notice u/s. 22(2) of 1922 Act on the name of the dissolved partnership firm and assessment was completed. As per the facts on record in the said case the additional ground was raised before the Tribunal challenging the validity of the assessments on the reason that the ITO was aware that the business of the firm was closed. In the said case also interpreting Sec. 44 of 1922 Act, it was held that if there is a discontinuance of business on the dissolution of firm then the tax liability in respect of business done during the existence of the firm cannot be escaped.

13. In the case of Raja Reddy Mallaram (supra) again the issue of interpretation of Sec.44 of the 1922 Act was before the Hon'ble Supreme Court. In the said case the assessee was AOP and the assessee AOP carried out the business from 01-10-1948 to 30-09-1949. The said AOP was carried out the business of liquor contracts obtained from the former State of Hyderabad. The contracts came to an end and then the business was discontinued and the assessee group was dissolved. The assessee AOP did not file return pursuant to the notice u/s. 22(1) of the 1922 Act. In this background of the facts interpreting the provisions of Sec. 44, it was held that even if the business was discontinued, the income earned during existence of the AOP was liable to be taxed. It is categorically held by the Hon'ble Supreme Court that what could be assessed is the income of the association received prior to its dissolution and the members of the association would be jointly and severally assessed thereto in their capacity as members of the AOP. The said observation by their lordships on the interpretation of the provisions of Sec. 44 of 1922 Act as then it were.

14. In the case of Star Andheri Estate (supra) it held as under:

> *The controversy in this case is in a narrow compass. The facts relevant for the determination of the controversy are also brief. So far as the amount of Rs. 12,90,000 is concerned, the material facts are that the assessee-firm was dissolved on 31st March, 1975, i.e., on the last day of the previous year relevant to the asst. yr. 1975- 76. The amount of Rs. 12,90,000 was due to the assessee-firm in respect of transaction entered into before its dissolution. A sum of Rs. 3,10,000 had been received by the said firm prior to its dissolution and the balance amount of Rs. 9,80,000 was received after dissolution. The contention of the assessee is that on the date of receipt of the said amount, the assessee-firm being not in existence, the said amount cannot be held to be the receipt of the assessee-firm and cannot be assessed to tax. We have carefully considered this submission. The relevant provisions of the IT Act, having a bearing on determination of the point in issue, are ss. 189 and 176 of the IT Act. Sec. 189 provides for the assessment of a firm which has been dissolved or whose business has been discontinued. Sub-s. (1) of the said section, which is material for the present purpose, is in the following terms:*
>
> *"189. Firm dissolved or business discontinued.—(1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the ITO shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment." .*
>
> *176 of the Act makes certain exceptions to the general rule that if the business or profession is discontinued before the commencement of the accounting year, the profits of the business or profession received in the accounting year cannot be taxed because the source of income did not exist in the accounting year. Sub-s. (3A), which was inserted by the Taxation Laws (Amendment) Act, 1975 w.e.f. 1st April, 1976 reads :*

"176(3A) Where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance."

It may also be expedient to set out sub-s. (4) of the said section which provides for taxation of income from profession received after the discontinuance of the profession. It reads :

"(4) Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance."

A careful reading of s. 189 and s. 176(3A) and 176(4) makes it abundantly clear that the IT Act contemplates that where a firm is dissolved, the assessment of the total income of such firm shall be made by the ITO as if no such dissolution had taken place. The same is the position in the case of discontinuance of the business of the firm. Sec. 189 keeps the firm alive for the purposes of assessment under the Act despite its dissolution. It does not provide for assessment of the partners of the dissolved firm which was the position under s. 44 of the IT Act, 1922 prior to its amendment in the year 1958 and which is the position even today under s. 159 of the 1961 Act in respect of the assessment of the legal representative of a deceased assessee. This section, on the other hand, clearly provides that the dissolved firm shall be assessed on its total income as if no such dissolution has taken place. The position is thus clear that despite its dissolution, for the purposes of levy of tax under this Act, the dissolved firm is deemed to be in existence. Subs. (3A) of s. 176 specifically provides that where any business is discontinued in a particular year, any sum received after the discontinuance shall be deemed to be the income of the recipient and shall be charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the person who carried on the business had such sum been received before such discontinuance. This sub-section thus creates a legal fiction. It is intended to resolve all doubts in regard to taxability of such income on account of discontinuance of business in the year of receipt. Or to put it differently, it makes an exception to the general rule that in order to hold the receipts chargeable to tax, in the year of its receipt, the business must be in existence in that year.

8. In the instant case, the business of the assessee-firm was discontinued from 31st March, 1975 when the firm was dissolved. A sum of Rs. 9,80,000 was received after the discontinuance of the business. The recipient was, however, the assessee-firm itself. That is so because by virtue of s. 189, the firm continued for the purpose of assessment despite its dissolution. Factually also, it is admitted position that despite dissolution, the receipt was distributed amongst the partners of the dissolved firm in their respective profit sharing ratios. There is no dispute that the income from the above receipts would have been included in the income of the firm had the income been received before discontinuance. The only objection to its chargeability to tax in the hands of the firm is on the ground that at the time of receipt, the firm had discontinued its business. This objection, however, is no more valid after incorporation of sub-s. (3A) in s. 176 of the Act which is intended specifically to meet such objections. Sub-s. (3A) clearly provides that any sum received after the discontinuance of the business shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if the same would have been chargeable as income had it been received before such

discontinuance. This sub-section constitutes an exception to the rule that business receipts are chargeable only if the business or profession is carried on in the year of receipt. In that view of the matter, we are of the clear opinion that the amount of Rs.9,80,000 was assessable in the hands of the assessee-firm in the year of receipt despite dissolution and discontinuance of its business by virtue of sub- s. (3A) of s. 176 r/w s. 189 of the Act.

9. We are fully supported in our above view by the recent decision of the Supreme Court in Nagarmal Baijnath vs. CIT (1993) 111 CTR (SC) 171 : (1993) 201 ITR 538 (SC), where the Supreme Court discussed at length the position of assessment of dissolved firm under the law as it stood prior to 1958 and the law as it stands now. The Supreme Court quoted with approval the following observations of Shah, J. in C.A. Abraham vs. ITO (1961) 41 ITR 425 (SC) (at 429) :

"In effect, the legislature has enacted by s. 44 that the assessment proceedings may be commenced and continued against a firm of which business is discontinued as if discontinuance has not taken place. It is enacted manifestly with a view to ensure continuity in the application of the machinery provided for assessment and imposition of tax liability notwithstanding discontinuance of the business of firms. By a fiction, the firm is deemed to continue after discontinuance for the purpose of assessment under Chapter IV."

It was also observed that the above observations would squarely apply to a case where the dissolution of the partnership firm leads to discontinuance of its business.

10. The learned counsel for the assessee referred to a number of decisions in support of the contention that the analogy of s. 159 would apply to s. 189. We find it difficult to accept the above contention because, in our opinion, the scheme of these two sections is completely different. Sec. 159 is akin to s. 44 of the IT Act, 1922, as it stood before its amendment by the 1958 Act. The scheme of assessment of income of a dissolved firm originally was same as of a deceased assessee but that scheme is no more applicable for assessment of income of dissolved firms. Now, under s. 189 or under the amended s. 44 of the 1922 Act, the ITO has to make an assessment of the total income of the firm as such as if no such discontinuance or dissolution had taken place. The analogy of s 159 is, therefore, not applicable to interpretation of s. 189. It may also be pertinent to mention that s. 176(3A) deals with all assessees whereas s. 189 deals with only business carried on by firms. It may also be observed that s. 176(3A) and s. 189 deal with two different aspects—the former with chargeability of receipt to tax despite discontinuance of the business in the year of receipt, the latter with assessment of a firm despite its dissolution.

15. In above all the cases what was brought to tax by framing the assessment, even after the dissolution of the firm or the AOP, was the income earned during the existence of those firms or AOP but received subsequently. The Ld. CIT(A) misinterpreted or misunderstood all the above judgments for coming to his erroneous conclusion. So far as the present case before us is concerned there is no dispute about the fact that a transaction found recorded with the analogous claim of the dissolved assessee firm is in the month of December, 2003. Nowhere it is the case of Assessing Officer that the said sum belong to the period during which the assessee firm was in existence and carried out its business. In fact the case of the assessee is well supported by the following decisions:

I. CIT Vs. United Trading Co. 212 ITR 532 (Raj.).

II. Banyan & Berry Vs. CIT 222 ITR 831 (Guj.).

16. In the case of United Trading Co. (supra) the Hon'ble High Court of Rajasthan has explained the scope of Sec. 189 and it is held as under:

> *"5. We have considered the matter. A deeming fiction is created by s. 189 in respect of a business or profession carried on by the firm which is discontinued or the firm is dissolved as if there is no such discontinuance or dissolution. The provisions contemplate that assessment could be made and all the provisions of the Act shall apply to such an assessment. This section refers to the business or profession carried on by a firm which has been discontinued or where the firm is dissolved. The power to make an assessment in such a case is in respect of that period for which the business or profession was carried on by the firm. Sec. 42 of the Partnership Act contemplates the contingency of dissolution of the firm and under s 42(c), the firm stands dissolved by death of a partner. The provision of s. 189 has been made for the limited purpose that any firm which is dissolved may not escape the liability to tax after its dissolution. It is not the power of recovery of tax which is to be examined, but as to whether there could have been any assessment of tax by invoking the provisions of s. 189 when the firm had not carried on any business and was not in existence (because it was dissolved). Sec. 2(31) of the Act defines "persons" and a firm has been included in the definition of person. It has not been brought on record as to who are the persons on behalf of the deceased partners who have inherited the property of such deceased partners. If the firm is not in existence then assessment could be made of the persons who are the legal heirs. The fact that the firm was not in existence during the asst. yr. 1982-83 has not been stressed and the finding which has been recorded by the Tribunal is that "the undisputed fact in the instant case is that the remaining two partners who comprised the firm from 1953 also died about 5-10 years back". Sec. 189, therefore, cannot be invoked in such a situation where the firm was not in existence and had not carried on any business. The finding which has been recorded by the Tribunal that no business was carried on by the firm in the asst. yr. 1982-83 and the provisions of s. 189 cannot be invoked is unassailable. For the purpose of capital gains also, the same position of law is applicable. The assessment in respect of capital gains could not have been made on the firm which has not carried on any business during the year 1982-83 when the sale of the property was effected.*

17. In the case of Banyan & Berry (supra) it is held as under:

> *44. So far as s. 189(1) is concerned, historically s. 44 corresponded to this provision under the Indian IT Act, 1922. In the first instance it accepts the fact of discontinuance of the business by the firm which may or may not have been dissolved. In the case of dissolution the fact of dissolution is accepted whether the business has been discontinued or not. It is on that accepted premise that provision for its deemed continuation has been made for the purpose of making assessment of the total income of the firm. Obviously, the purpose of making assessment of the total income of the firm related to the income of the firm earned by it while it was in existence. There is no assumption that a firm continues to exist for the purpose of earning income from a business which it has discontinued or after it has ceased to exist as a result of dissolution. It would be a paradox to say that a firm has discontinued its business, yet, it is deriving profits from its discontinued business thereafter or to say that a firm, which has ceased to exist, but continues to earn profit even in the state of non-existence after its dissolution. As soon as a firm is dissolved, all its assets become the capital available for discharge of its liabilities incurred while in existence and to disburse the remainder amongst partners. As the firm is a separate entity for assessment under the Act which can be assessed as such, for the purpose of continuity in making assessment of all liabilities including tax or penalty of any other sum chargeable under the provisions of the Act which it had incurred upto its discontinuance of business or dissolution, in*

that status, a legal fiction has been created for deeming the dissolved firm to exist and it is deemed to exist under the IT Act only for the purpose of assessment and not for any other purpose. But for this provision, perhaps, it would not have been possible to continue or to initiate proceedings against the nonexisting firm or in respect of non-existing business in respect of income earned by the firm while in existence or of the business while it was continuing. There being two separate entities, namely, the firm and partners in the individual capacity, it would not have been possible to proceed against the partners in their individual capacity in the absence of this provision to implement the provisions of the Act in respect of the liability which had already been incurred. In our opinion, s. 189 cannot extend to income or profits which can be said to have accrued, arisen or received after the discontinuance of such business or dissolution of the firm.

45. In this connection, we may also notice that s. 189 does not lay down procedure for the assessment in such cases. However, s. 176 which deals with discontinuance of business lays down the procedure that where any business or profession is discontinued in any assessment year, the income of the period from expiry of previous year for that assessment year upto the date of such discontinuance may be charged in the same assessment year. It also provides separate assessments to be made for the completed assessment year and part of the assessment year that is to say that the provision is made for making assessment upto the date of discontinuance of the business only. In the case of dissolution, s. 176 specifically does not talk of dissolution. It is apparent that two situations may arise : (i) that by dissolution of the firm, the business carried on by it may not discontinue but may have devolved on some other entity as a result of succession. In that event, s. 170 provides that where a person carrying any business or profession has been succeeded therein by any other person and the successor continues to carry on that profession or business, the predecessor is to be assessed in respect of the income of the previous year upto the date of succession and successor shall be assessed in respect of the income of the part of previous year after the date of succession. In case there is no succession of business, dissolution results in cessation of business also, that is to say, it also amounts to discontinuance of business, then the case would be covered by subss. (1), (2) and (3) of s. 176 bringing the same result.

Ordinarily, under the IT Act assessment is made for the assessment year in respect of income earned by assessee during previous year ending before commencement of the assessment year. Secs. 170 and 176 both provide exceptions to the use and permit the income of the year during the same year, where business is discontinued.

46. This conclusion is further strengthened from the fact that s. 188 clearly deals with the situation where a firm carrying on business is succeeded by another firm and the case is not covered by s. 187, separate assessments are to be made on the predecessor firm and the successor firm in accordance with the provisions of s. 170, that is to say, where on account of dissolution there is a case of succession of business or profession which was being carried on by the firm, the assessment of the predecessor firm (dissolved firm) and the successor firm is to be done as in the case of succession of business under s. 170 and where it is not a case of succession of business but of discontinuance of business, the provisions of s. 176 in the matter of procedure of such assessment is attracted. Therefore, conclusion, in our opinion, is irresistible, that s. 189(1) by itself does not authorise assessment of the firm in respect of any income earned after it ceased to exist and the deeming provision of treating the income of the firm as if such dissolution or discontinuation of its business has not taken place is applicable only in respect of income which has been earned

by it prior to its dissolution or discontinuance of business by it. Fiction created under s. 189 does not project into the future transactions.

We are fortified in our conclusion by high authority. Sec. 189 of IT Act, 1961 is corresponding to s. 44 of the Indian IT Act, 1922 under Chapter IV. In Shivram Poddar vs. ITO (1964) 51 ITR 823 (SC) : TC 34R.800, Shah, J. as he then was speaking for the Court said : "The object of enactment is clear. It is to authorise assessment of tax on income or gains earned in a business, profession or vocation carried on by a firm or association before discontinuance of business, profession or vocation or before dissolution of association....."

In CIT vs. Raja Reddy Mallaram (1954) 51 ITR 285 (SC), the Supreme Court while dealing with the case of assessment of a dissolved AOP under s. 44 of the 1922 Act (now corresponding s. 177 in the Act of 1961) said, s. 44 ensures, by a fiction, the continuity of personality of the AOP even after its dissolution for the purpose of assessment and procedure for assessment after its dissolution of its pre-dissolution income of an AOP is the same as that of assessment while it continued to exist.

By virtue of s. 44, the personality of association is continued for the purpose of assessment and Chapter IV applies thereto. What can be assessed is the income of association received prior to its dissolution."

The principle fully applies to dissolution of the firm or discontinuance of the business by firm as well. Sec. 44 under the 1922 Act was composite provision dealing with assessment of income in the case of discontinuance of business by AOP or by a firm or dissolution of association. We may notice prior to its amendment in 1958, expression `dissolution of firm' was absent. When the New Act came into force repealing 1922 Act, provisions of s. 44 re-enacted in separate sections. While s. 189 dealt with assessment of income in case of discontinuance of business by the firm or in case firm is dissolved, s. 177 dealt with assessment of income in case discontinuance of business by association or its dissolution. Provisions in substance remain the same.

Rajasthan High Court in the case of George Talkies Circuit vs. CIT (1987) 66 CTR (Raj) 150 : (1988) 171 ITR 386 (Raj) : TC 34R.828, held :

"It is clear from the above quoted provisions that despite the dissolution of the firm on account of its insolvency, it continued to be a subsisting firm under the IT Act for the purpose of assessment of the total income of the firm till the date of its dissolution. They contain deeming provisions for the continuance of the dissolved firm for this limited purpose. ....

The deeming provisions of s. 189(1) of the Act are not applicable to the income arising long after the dissolution of the firm."

The view was reiterated by that Court in CIT vs. United Trading Co. (1995) 129 CTR (Raj) 93 : (1995) 212 ITR 532 (Raj) : TC 34R.835 wherein the Court held as under :

"A deeming fiction is created by s. 189 in respect of a business or profession carried on by the firm which is discontinued or the firm is dissolved as if there is no such discontinuance or dissolution. The provisions contemplate that assessment could be made and all the provisions of the Act shall apply to such an assessment. This section refers to the business or profession carried on by a firm which has been discontinued or where the firm is dissolved. The power to make an assessment in such case is in respect of that period for which the business or profession was carried on by the firm...."

47. In this connection it is also apposite to note that s. 189 is a machinery section and is not a charging section and it has been enacted for the

purposes of continuing for the application of the machinery provision of the assessment and imposition of tax liability already incurred by the firm while in existence or during the course when business was carried on by the firm. By extending machinery provision, the substantive levy cannot be effected by charging an entity which is not in existence. It may be noticed that s. 189 assumes the continuance of the business or existence of the firm only for the purpose of assessment and not for the purpose of imposing charge which had not already come into existence before such discontinuance or its dissolution. There is always time lag between when the tax becomes due and when it crystallise into a realisable amount. Income-tax is a levy on the income earned during a specified period, viz., a year. Income of the year is known at the end of the year. Hence, on the completion of the previous year when total income of the assessee for the year becomes known, the levy under the Act comes into existence. However, its computation and assessment resulting into a crystallised liability takes some time. Moreover, firm may have incurred other liabilities under the Act while in existence, but proceedings for effecting such a liability may not have been completed or initiated. It is for that reason that for the purpose of making such charge or levy to which the firm has become subject to while in existence effective, a firm which is actually ceased to exist is deemed to exist for continuity of machinery provision for bringing to the charge such tax and other obligations.

18. We are of the opinion that as there is no evidence to suggest that the transaction allegedly noted on loose paper with name analogous to the name of the assessee firm pertains to the year, in which the assessee firm was in existence. Admittedly the assessee firm has been dissolved on 31-03-2002 and alleged transaction is found in December, 2003, no income can be brought to tax treating unexplained income of the assessee in the A.Y. 2004-05. We, accordingly, allow the contention of the assessee on this specific plea and quash the proceedings initiated u/s. 147 and cancel the assessment framed by the Assessing Officer and upheld by the CIT(A).”

9. In the instant case, undisputedly the assessee firm was dissolved on 31.08.2012 and there is nothing on record to show that any business transaction has been carried out after its dissolution. The assessment order has been framed on a dissolved firm which has been upheld by the Ld. CIT(A)/NFAC. Thus, in light of the factual matrix of the case and the legal position set out above and in the absence of any contrary material brought on record by the Revenue to rebut the contentions of the assessee to enable us to take a different view, we hold the reassessment proceedings to be invalid and bad in law. The assessee succeeds on this legal ground. Accordingly, the other grounds on merit become irrelevant and need to be adjudicated.

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

ITA No. 2393/PUN/2024, AY 2017-18

11. In this appeal, the assessee has challenged the order of the Ld. CIT(A)/NFAC whereby he confirmed the penalty of Rs.4,36,462/- u/s

271AAC(1) of the Act levied by the Ld. AO pertaining to AY 2017-18 vide his order dated 23.09.2022.

12. Vide our above order of even date, we have allowed the appeal of the assessee on the legal issue raised and quashed the assessment order passed by the Ld. AO and upheld by the Ld. CIT(A)/NFAC. Hence, the impugned assessment order on quantum which formed the basis of imposition of penalty u/s 271AAC of the Act do not survive. Accordingly, the impugned penalty has no legs to stand and is hereby deleted. The grounds raised by the assessee are thus allowed.

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

14. To sum up, both the appeals of the assessee are allowed.

Order pronounced in the open court on 24th November, 2025.

Sd/-	Sd/-
(R.K. Panda)	(Astha Chandra)
VICE PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 24th November, 2025.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

सहायक पंजीकार/ Assistant Registrar
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune