

<b>आयकर अपीलीय अधिकरण 'डी' न्यायपीठ, चेन्नई।</b> <b>IN THE INCOME TAX APPELLATE TRIBUNAL 'D' BENCH: CHENNAI</b> <b>श्री मनु कुमार गिरि, न्यायिक सदस्य एवं एस. आर. रघुनाथा, लेखा सदस्य के समक्ष</b> <b>BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND</b> <b>SHRI HON'BLE S.R. RAGHUNATHA, ACCOUNTANT MEMBER</b>		
<b>आयकर अपील सं./ ITA No.1222/Chny/2025</b> <b>निर्धारण वर्ष /Assessment Year: 2017-18</b>		
<b>Varam Capital Pvt. Ltd.,</b> <b>No.3726, No.41, 6<sup>th</sup> Avenue,</b> <b>Q Block, Anna Nagar,</b> <b>Chennai – 600 040.</b> <b>[PAN: AABCK4258L]</b>	<b>Vs.</b>	<b>The Dy. Commissioner of</b> <b>Income Tax,</b> <b>Corporate Circle-3(1),</b> <b>Chennai.</b>
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>
अपीलार्थी की ओर से/ Appellant by	:	Shri T.V.Muthuabhirami, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri AR V Sreenivasan, CIT
सुनवाई की तारीख/Date of Hearing	:	03.07.2025
घोषणा की तारीख /Date of Pronouncement	:	01.09.2025

### आदेश / O R D E R

#### **PER MANU KUMAR GIRI (Judicial Member):**

The captioned appeal filed by the assessee is directed against order of the Ld. Commissioner of Income Tax (Appeals) (NFAC), Delhi [CIT(A)] dated 17.02.2025 for Assessment Year 2017-18.

2. The assessee has raised the following legal grounds of appeal:

1. *For that the order of the National Faceless Appeal Centre is contrary to law, facts and circumstances of the case and at any rate against the principles of equity, natural justice and fair play.*
2. *For that the National Faceless Appeal Centre failed to appreciate that the order of the Assessing Officer is without jurisdiction.*
3. *For that the National Faceless Appeal Centre failed to appreciate that the assessment order could not have been passed in the name of the appellant at all in first place, since the appellant is liquidated by the order of the National Company Law Tribunal.*



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3. At the time of hearing the Id. counsel for the assessee has filed paper books and through submissions raising admission of additional ground. According to Id. counsel for the assessee, the additional ground was to the very root of the matter as it questions the very jurisdiction of the Ld. assessing officer to make the assessment on a non-existent person. It further stated that it challenges the jurisdiction of the Ld. assessing officer in making the assessment on erstwhile Varam Capital Pvt. Ltd. which had amalgamated with 'Dvara Kshetriya Gramin Financial Services Pvt. Ltd w.e.f. forced 09.07.2020. It was further mentioned that this fact was specifically brought to the notice of the Ld. assessing officer (Page 5 of the assessment order) yet the assessment order has been passed on 30.03.2023 on the assessee company which is nonexistent. She referred to the decision of the Hon'ble Supreme Court in case of NTPC Ltd to support his contention. The Ld. departmental representative vehemently objected to the additional ground of appeal stating that this ground of appeal has not been raised in the original appeal memo filed by the assessee and therefore now there is no reason that this ground of appeal should be admitted. We have carefully considered the rival contentions. The additional ground raised by the assessee refers to the jurisdictional issue, no further facts are required to be examined therefore in the interest of Justice, and in view of the decision of the Hon'ble Supreme Court in case of NTPC Ltd we admit the additional ground of appeal. As the additional ground of appeal goes to the root of the appeal we first state the facts relevant to thereto and then decide this ground of appeal.

4. The brief facts of the case:



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The assessee is a company and had filed its return of income for A.Y 2017-18. The assessment was completed u/s 143(3) of the Income Tax Act, assessed income of Rs.31,89,940/-. Later, the Principal Commissioner of Income Tax-3 ('PCIT' in short), has passed order u/s 263 of the Act, and cancelled the order passed u/s 143(3) of the Act by the AO by observing it as erroneous. Further, the PCIT, has given directions to pass a fresh order after examining the issues. Thereafter, as per direction of the Ld. PCIT, the case was posted for hearing giving an opportunity to the appellant dated 28.09.2022 to furnish details/clarifications, if any. Subsequently the assessee company filed its submissions vide letter dated 16.02.2023 & 02.03.2023. The AO considered and verified the submissions with records. Further, as per the details available with the Department, the assessee's company had made cash deposits totalling Rs.19,53,03,367/- into the various bank accounts maintained by it, during the demonetization period. After verification the AO arrived at the actual quantum of cash deposits during demonetization at Rs.13,55,99,768/- which was treated as unexplained cash credits of the appellant as per section 68 of the Act. Accordingly, the assessment was concluded by the AO after assessing total income of Rs.13,87,89,708/- u/s 144 r.w.s. 263 of the Act after making addition of Rs.13,55,99,768/- to the assessed income of Rs.31,89,940/- as per normal provisions u/s 143(3) dated 30.12.2019.

Since the nature and source of cash deposits were not explained by the assessee before the AO, cash deposits to the extent of Rs.13,55,99,768/- was treated as unexplained cash credits within the meaning of Section 68 of the Act. During appellate proceedings, the assessee has remained non-responsive despite multiple opportunities



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provided u/s 250 of the Act as mentioned in the previous paragraphs. In the light of the fact that the nature and source of cash deposits have not been explained with documentary evidences, the addition made u/s.68 of the Act corresponding to cash deposits during demonetization of Rs.13,55,99,768/- determining the final assessed income at Rs.13,87,89,708/- as per the assessment order u/s.144 r.w.s. 263 of the Act dated 30.03.2023 is upheld. The grounds of appeal are dismissed.

4. The Id. Counsel Ms. T. V. Muthuabhirami, Advocate submitted as under:

*It is most humbly submitted that the brief notes on submissions are made in support of the grounds of appeal (legal issues) filed by the appellant/assessee. The submissions are made under the instructions from the client.*

*The present appeal arises out of the order passed u/s.250 dated 17.02.2025 for the Assessment Year 2017-18. The legal grounds raised by the appellant are three-fold and are as follows:*

- 1. The assessment order passed in the name of a dissolved company is invalid, void and liable to be quashed.*
- 2. Assessment order passed by the Jurisdictional Assessing Officer is invalid, void and liable to be quashed.*
- 3. Assessment order passed u/s.144 is bad in law. Best judgment. assessment cannot be passed merely because the Assessing Officer was not satisfied with the reply of the assessee.*

**Brief facts leading to the present appeal**

*Assessment in the case of the appellant was originally completed on 30.12.2019 **(page-2 of paper book)**. The said order was taken up for revision u/s.263 and an order of revision was passed on 17.03.2022 **(page-17 of paper book)**. Aggrieved by the order of revision, the appellant preferred an appeal before this Hon'ble Tribunal and the same came to be dismissed vide order dated 10.05.2023 **(page-21 of paper book)**. Pursuant to the revision order, an assessment order came to be passed u/s.144 read with section 263 vide order dated 30.03.2023, against which, the assessee preferred an appeal and the Commissioner of Income Tax (Appeals) dismissed the appellant's appeal vide order u/s.250 dated 17.02.2025.*



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*Aggrieved by the order passed u/s.250, the appellant is in appeal before this Hon'ble Tribunal.*

**Order passed in the name of liquidated company is bad in law.**

*It is pertinent to submit that the appellant-company went into voluntary dissolution and an order u/s.59 of Insolvency and Bankruptcy Code, dated 09.07.2020 was passed by the Hon'ble National Company Law Tribunal, Chennai Bench dissolving the appellant-company from the date of the order (i.e.09.07.2020) **(page-05 and page 13 of paper book).***

*It is submitted that the Revenue was put to notice by the appellant-company at various stages of dissolution. Initially a no-objection was given by the Assessing Officer in terms of section 281(1)(ii) of the Income Tax Act, 1961. **(page-1 of paper book)**. Subsequently, "no-due certificate" dated 16.05.2019 was issued by the Assessing Officer during the process of dissolution. The same is captured in the order of the Hon'ble NCLT in **para-12, page 10 of the paper book**. Thereafter, during the course of assessment conducted pursuant to the order of revision u/s.263, the appellant expressed that it is liquidated. **(page-128 of the paper book-2 as well as page 5 of assessment order captures the same as "Since the company has already been liquidated, the bank statements of the same could not be obtained")**.*

*Despite the knowledge that the appellant-company is liquidated, the assessment u/s.144 r.w.s. 263 dated 30.03.2023 came to be passed in the name of the dissolved company "VARAM CAPITAL PRIVATE LIMITED", which is void ab initio, invalid and bad in law, liable to be quashed.*

*Reliance is placed in the following decisions in support of the above proposition.*

- *Jitendra Chandralal Navlani vs. Union of India [2024] 159 taxmann.com 498 (Bombay) **(para 4, page 92 of the paper book)***
- *PCIT, New Delhi vs. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC) **(para 33, page 105 and 106 of the paper book)***
- *Saraswati Industrial Syndicate Ltd. vs. CIT [1990] 53 Taxman 92 (SC) **(para 5 and 6, page 111 of the paper book)***

*It is submitted that the moment a company is dissolved, it no longer exists and hence an order made in the name of the dissolved company is void.*

*The reliance placed by the Revenue in the judgement rendered by the Hon'ble Delhi High Court in the case of Sky Light Hospitality LLP (90*



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*taxmann.com 413(Delhi) and dismissal of assessee's SLP in 92 taxmann.com 93, is misconceived. The said case dealt with the reopening notice and not the assessment order. Further, the Hon'ble Supreme Court in the case of Maruti Suzuki (cited supra) had considered the judgment rendered by the Hon'ble High Court of Delhi as well as dismissal of SLP by the Hon'ble Supreme Court and had then ruled the issue in favour of the assessee. The Hon'ble Supreme Court specifically noted that Sky Light Hospitality was decided on a peculiar facts pertaining to reopening notice. Further, the Hon'ble Supreme Court also discussed the relevance of other judgments, namely Rajender Kumar Sehgal (Delhi High Court), Chandreshbhai Jayantibhai Patel (Gujarat High Court), Alamelu Veerappan (Madras High Court), which had distinguished Sky Light Hospitality. Further, various other judgments were discussed by the Hon'ble Supreme Court and then held the issue in favour of the assessee.*

**5. Per contra, the Id. DR Shri AR V Sreenivasan, CIT submitted written submissions and the contents are reproduced herein below:**

*A. The assessee's counsel had filed copy of order dated 09.07.2020 passed by the NCLT and relied upon para 12 thereon. A copy of the certificate dated 28.03.2019 issued by the DCIT, Corporate Circle 3(2), Chennai was also filed. The counsel also pointed out to the assessment order dated 30.03.2023 - page no.5 wherein the AO has reproduced the submission of the assessee that the company has already been liquidated. Thus, it was prayed by the assessee's counsel that the assessment order is to be quashed. The counsel has also submitted that this ground was not taken before the first appellate authority but is now being raised as a legal issue.*

*B. The undersigned had submitted the copies of the letters dated 18.02.2022 and 20.02.2022 filed by the assessee before the PCIT during the course of the proceedings u/s. 263 wherein the signature is only in the name of authorised signatory for Varam Capital Private Limited.*

*C. During arguments, primarily it was submitted by the undersigned that the assessee has filed Form No.36 and 35 in the name of the company and has also signed as the director of the company. And even during the course of the proceedings before ITAT against the order under section 263, the assessee has not taken any objection that the company is not in existence. In Form No. 36 -below the signatory, the assessee had written by hand as 'Erstwhile Director' which does not take away the fact that the Form No.36 was filed in the name of the company.*

*D. The assessee has filed an appeal before the ITAT against the order u/s. 263 vide ITA No. 346/2022. Copy of the ITAT order dated 10.05.2023 was also filed by the counsel. It is seen that in the Form No.36 filed against the order u/s. 263 and the grounds of appeal, the name of the appellant is mentioned as M/s. Varam Capital Pvt. Limited and the verification has been*



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*made by the managing director. In all these documents, the PAN of the assessee company has been used.*

*It is submitted that all these documents have been filed subsequent to the order of liquidation.*

*E. The assessee had participated in the proceedings u/s.263 and the consequent assessment proceedings and also filed the appeals against the assessment order dated 30.03.2023. The present appeal before the court is having no doubt that the above assessment order is meant for it. Thus the ratio of the judgement of the Hon'ble Delhi High Court in the case of M/s. Sky Light Hospitality LLP [405 ITR 296] squarely applies to the present case.*

*F. Thus, the assessee's ground is not valid in the light of the Delhi High Court judgment in the case of Sky Light Hospitality LLP where the High Court vide Para 17 stated "There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s Sky Light Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused." This was upheld by the Supreme Court in the judgement dated 06.04.2018 (303 CTR 130).*

*G. In the present case also, the assessee has no doubts about the proceedings and had fully participated before the various authorities and ITAT has also upheld the validity of the order u/s.263.*

*H. The Hon'ble Supreme Court in the case of M/s. Maruti Suzuki India Limited (107 taxmann.com 375) vide para 27 had reproduced para 17 of the judgment of Delhi High Court in the case of M/s. Sky Light Hospitality LLP and vide para 30 of the said judgment once again clarified that the decision in the case of M/s. Sky Light Hospitality LLP is valid on the facts of that case.*

*I. In the present case, no objection was taken before ITAT during the appeal against order u/s.263 and appellant continued using the same name and PAN. Thus, it is submitted that there is a stronger case for dismissal of this ground.*

*J. Against the ground of JAO passing the assessment order, reliance was placed by the undersigned on the judgment of the Hon'ble Madras High Court in the case of M/s. Advantage Strategic Consulting (P) Ltd. [124 taxmann.com 511] where the High Court vide para 9 held that "the assessee cannot have any right to choose his Assessing Authority, as no prejudice can be said to have been caused to the assessee depending upon which authority of the Department passes the assessment order. The assessee can only be*



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*concerned with getting an opportunity of hearing before the concerned Assessing Authority and adduce his evidence and make his submissions before the concerned Assessing Authority". Thus, it is prayed that this ground may kindly be dismissed as the assessee has not alleged and established that it was not given proper opportunity of hearing.*

*K. The third jurisdictional ground that an order cannot be passed u/s. 144 when the assessee has participated during the proceedings, was countered by the undersigned that the assessee has not furnished several particulars as seen from page 7 of the assessment order like the ledger, names of parties, etc. and hence the case is covered u/s. 144(1)(b)&(c) where the non-submission of any of the particulars entitles the officer to pass as an order u/s.144.*

6. We have heard both parties and perused the record, written submissions. Now we have to see the judgments on this point.

7. The decision of the Hon'ble Supreme Court in case of Saraswati industrial syndicate versus CIT 186 ITR 278 (SC) wherein the Hon'ble Supreme Court held that on amalgamation the amalgamating company ceased to exist in the eye of the law. Similarly, the decision of Hon'ble Delhi High Court in case of micron steels private limited 372 ITR 386 (Delhi) and the decision of the Hon'ble Supreme Court in case of martial sons 223 ITR 809 (SC).

8. It has been held in the following decisions that, if a statutory notice is issued in the name of a non-existent entity, the entire assessment would be a nullity in the eyes of law:

- PCIT Vs Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC)
- CIT v. Intel Technology India (P.) Ltd. [2015] 57 taxmann.com 159/232 Taxman 279/[2016] 380 ITR 272 (Kar.)
- Pr. CIT v. Nokia Solutions & Network India (P.) Ltd. [2018] 90 taxmann.com 369 / 253 Taxman 409/402 ITR 21 (Delhi)
- CIT Vs Spice Entertainment Ltd [Civil Appeal No. 285 of 2014, dated 2-11-2017]



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9. Similarly, a notice to the amalgamating company, subsequent to the amalgamation becoming effective and despite the fact of the amalgamation having been brought to the notice of the assessing officer, is void ab initio as held in the following decisions:

- BDR Builders & Developers (P.) Ltd. v. Asstt. CIT [2017] 85 taxmann.com 146 / 397 ITR 529 (Delhi)
- Rustagi Engineering Udyog (P.) Ltd. v. Dy. CIT [2016] 67 taxmann.com 284/382 ITR 443 (Delhi)
- Khurana Engineering Ltd. v. Dy. CIT [2013] 34 taxmann.com 261/217 Taxman 75 (Mag.)/ [2014] 364 ITR 600 (Guj)
- Takshashila Realties (P.) Ltd. v Dy. CIT [2017] 77 taxmann.com 160 (Guj.)
- Alamelu Veerappan v. ITO [2018] 95 taxmann.com 155/257 Taxman 72 (Mad.)

10. In the present case, we have gone through para 12 of the order dated 09.07.2020 passed by the NCLT (Page 5-13 of P.B.-1). The concerned DCIT, Corporate Circle 3(2), Chennai also issued a copy of the no objection certificate dated 28.03.2019 (Page 1 of P.B.-1). The assessment order dated 30.03.2023 at page no.5 wherein the AO has reproduced the submission of the assessee that the company has already been liquidated. The Liquidator has also placed on record the 'No due Certificate' issued by the DCIT, Corporate Circle 3(2), Chennai. Despite knowledge of the liquidation of the assessee company by NCLT vide order dated 09.07.2020, the AO passed assessment order dated 30.03.2023 on non-existence company. Thus, we are of the considered view that the assessment order and CIT(A) order passed on non-existence company is void and liable to be quashed.

11. Therefore respectfully following the decision of the Hon'ble Supreme Court and different High Courts including Hon'ble jurisdictional High Court we hold that the assessment passed by the Id. assessing



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officer is not sustainable, as it has been passed after the amalgamation of the assessee company who was no more in existence. In view of this the additional ground raised by the assessee succeeds.

12. As while deciding the additional ground of appeal raised by the assessee we've already held that the impugned assessment made by the Ld. assessing officer do not sustain therefore we do not decide other grounds /legal grounds.

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

*Order pronounced on 1<sup>st</sup> day of September, 2025 at Chennai.*

**Sd/-**

(एस. आर. रघुनाथा)  
(S.R. Raghunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 01<sup>st</sup> September, 2025.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF

**Sd/-**

(मनु कुमार गिरि)  
(Manu Kumar Giri)

न्यायिक सदस्य / Judicial Member