**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No. 2831/Kol/2025**
**(Assessment Year 2012-2013)**

**Ampi Finance Limited,**
**(Successor Company of Atlantic**
**Vintrade Pvt. Ltd.),**
3rd Floor, 22, R.N. Mukherjee Road,
Kolkata - 700001
[PAN: AACCA3680R] .............................. **Appellant**

**vs.**

**Income Tax Officer,**
**Ward-4(3), Kolkata,**
Aayakar Bhawan, P-7,
Chowringhee Square,
Kolkata - 700069 ................................. **Respondent**

**Appearances by:**

Assessee represented by : S.K. Tulsiyan, Advocate
Lata Goyal, CA

Department represented by : Ranu Biswas, CIT, DR

Date of concluding the hearing : 16.02.2026
Date of pronouncing the order : 05.03.2026

**O R D E R**

**Per Rajesh Kumar, AM**

The present appeal filed by the assessee arises from order dated 09.09.2025 passed u/s 250 of the Income Tax Act, 1961 (hereafter "the Act") by the Ld. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to "the Ld. CIT(A)] for the assessment year 2012-13.

2. At the time of hearing, the Ld. Counsel for the assessee pressed two issues as under:

(i) The appellate order was assailed by the assessee on the ground that the CIT(A) has upheld the invalid reopening of assessment u/s 147 of the Act.

(ii) The appellate order passed by the Ld. CIT(A) is wrong as it has upheld the assessment order based on non-existing company (amalgamating company).

3. The facts in brief are that the assessee filed return of income on 28.09.2012 declaring total income at Rs. 'Nil'. Thereafter, the case of the assessee was selected for scrutiny and ex-parte assessment u/s 144 of the Act was passed vide order dated 19.03.2015 assessing income at Rs. 26,17,220/-. Thereafter, the assessment was reopened after the AO received information from DDIT (Inv.) that the assessee company is beneficiary of bogus capital gains/loss on penny-stock and accordingly, the case was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2019. The assessee complied the said notice on 10.04.2019 declaring 'Nil' income. Thereafter , the statutory notices were issued which were duly replied by the assessee. Finally, the addition was made to the income of the assessee in the assessment framed u/s 143(3)/147 of the Act dated 28.12.2019 by making three additions:

(i) disallowance of cash credit of Rs. 6,89,70,444/-

(ii) Addition u/s 69C of the Act at Rs. 3,37,949/-.

(iii) Addition u/s 69C of the Act at Rs. 6,18,50,000/-

4. The said order of the assessee was affirmed by the Ld. CIT(A) in the appellate proceedings.

5. The Ld. AR submitted before the Bench that the re-opening of assessment was made by the AO after recording reasons to believe and no

addition was made for the items of escaped income as figured in the reasons recorded. The ld AR therefore submitted that the AO has no jurisdiction to make three additions in reassessment order dated 28.12.2019 as stated hereinabove as these additions were not subject to matter of reasons recorded u/s 148(2) of the Act and reasons for which the reopening was done was not added by the AO. Therefore, once the very income which was stated to have escaped in the reasons recorded did not find its place in the assessment order then the very jurisdiction of the AO under Explanation 1 to 147 fails and consequently no other addition can be made. The Ld. AR has in defence of the arguments relied upon the decision of Hon'ble Kolkata High Court in the case of CIT (Exemption) Vs. B.P. Poddar Foundation For Education reported in (2023) 148 taxmann.com 125 (Calcutta) and CIT-5, Mumbai Vs. Jet Airways (I) Ltd. reported in (2011) 331 ITR 236 (Bombay). The Ld. AR therefore, prayed that the addition made by the AO may kindly be deleted as without jurisdiction.

6. The Ld. DR on the other hand relied the orders of authorities below.

7. After hearing the rival contention and perusing the material available on record, we find that the reasons recorded by the AO u/s 148(2) of the Act which are available at page no. 15 and the same are extracted below for the sake of ready reference:

> *"An information has been received from Pr.DDIT(Inv.), Unit-3(2), Kolkata, that investigation of M/s Banas Finance Ltd., revealed that it was a penny stock. This company had been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or short term capital loss in their books of accounts. The assessee company M/s. Atlantic Vintrade Pvt. Ltd had made investments of Rs. 49.41.545/-by way of subscribing in the scrip of M/s Banas Finance Ltd. This information has been passed on for verification in respect of source of fund or genuineness of the transaction and further necessary action. So, I have reason to believe with the materials on record that Rs. 49,41,545/- has escaped assessment within the meaning of section 147 of 1.T. Act."*

8. A perusal of above reasons reveals that the AO has noted that the assessee company M/s Atlantic Vintrade Pvt. Ltd. had made investment of Rs. 49,41,545/- by way of subscribing in the scrip of M/s Banas Finance

Ltd. and the said information has been passed on for verification in respect of source of fund or genuineness of the transaction and further necessary action so I have reason to believe with the materials on record that Rs. 49,41,545/- has escaped assessment. Therefore, investments in M/s Banas Finance Limited of Rs. 49,41,545/- which apparently was not subject matter of addition in the assessment framed by the AO, therefore, the very jurisdiction of the AO fails and the addition made by the AO are without jurisdiction. The case of the assessee is squarely covered by the decision of jurisdictional High Court in the case of CIT (Exemption) Vs. B.P. Poddar Foundation For Education (supra) wherein it has held as under:

> *"14. While on this issue, we should bear in mind the decision in the case of GKN Driveshafts (India) Ltd. (supra) wherein it was held that the assessing officer is bound to furnish reasons within a reasonable time and the notices is entitled to file their objection to such notice and the assessing officer is bound to dispose of the same by passing a speaking order. Though the Explanation 3 inserted by the amendment empowers the assessing officer to assess the income in respect of any issue which has escaped assessment when such issue comes to his notice subsequently in the course of the proceedings under section 147 notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section 2 of section 148, the prerequisite is there should be a valid notice. Admittedly, in the case on hand, the notice was held to be not sustainable. If that be so, the assessing officer cannot be stated to be empowered to make a roving enquiry into other issues which according to him came to his notice during the reassessment proceedings. The foundation of a reassessment proceeding is a valid notice and it this notice is held to be invalid the entire edifice sought to be raised on such foundation has to collapse."*

Similarly, the similar issue has been laid down by the Hon'ble High Court in the case of CIT-5 Vs. Jet Airways (I) Ltd. (supra). We ,respectfully following the ratio laid down by the above decisions, set aside the order of the Ld.CIT(A) and direct the AO to delete the additions as the same are made without jurisdiction.

9. The second issue raised by the assessee is against the order of Ld.CIT(A) upholding the assessment order which has been passed on non existing entity as the company M/s Atlantic Vintrade Pvt.Ltd. was amalgamated with AMPI Finance Limited vide order of the Hon'ble NCLT dated 08.02.2018 with the appointed date of amalgamation being

01.04.2016. The AO was duly informed by the assessee vide letter dated 13.10.2017 qua the said amalgamation a copy of which is available at page no. 11. Thereafter, again the assessee informed the AO vide letter dated 14.11.2019 about the amalgamation. However, the AO issued notice u/s 148 of the Act on 31.03.2019 and went on with the passing of the order in the name of non-existing entity which was merged with the assessee company AMPI Finance Limited. The Ld. AR therefore, argued that the assessment framed on a non-existing entity is bad in law and may kindly be quashed. In defence of his arguments,. the Ld. AR relied on the decision of Sarswati Industrial Syndicate Ltd. Vs. CIT reported in (1990) 186 ITR 0278 (SC), wherein it has been held as under:

> *"When two companies are merged and are so joined as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity. After the amalgamation of the two companies the transferor company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets."*

10. The case of the assessee is covered by the decision of Hon'ble Apex Court in the case of PCIT Vs. Maruti Suzuki India Limited reported in (2019) 416 ITR 613, wherein it has been held as under:

> *"The assessee SPIL was a joint venture between SMC and MSIL. It filed its return declaring certain taxable income. The return was processed under section 143(1) and then picked up for scrutiny. Notices under section 143(2) were issued. Subsequently, the High Court passed an order approving the Scheme of Amalgamation by which SPIL (Amalgamating Company) was amalgamated with 'MSIL (Amalgamated Company) with effect from 1-4-2012. Thereafter. assessment proceedings continued with the participation of MSIL representing SPIL in the assessment proceedings. The Assessing Officer passed the assessment order under section 143(3), read with section 144C(1) in the name of SPIL. The assessee filed appeal where one of the grounds urged was that the assessment order was without jurisdiction in as much as it had been passed in the name of an entity that had ceased to exist on the date of the assessment order. The Tribunal accepted the said plea of the assessee as a result of which the assessment order was set aside. On revenue's appeal the High Court following its earlier decision in the case of the assessee for assessment year 2011-12 affirmed the decision of the Tribunal. On appeal to the Supreme Court, it was held that.*
>
> *"33 In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name.*

> *The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment (supra) on 2 November 2017. The decision in Spice Enfotainmenthos been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment (supra)*
>
> *34. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty To detract from those principles is neither expedient nor desirable*
>
> *35. For the above reasons, we find no merit in the appeal The appeal is accordingly dismissed. There shall be no order as to costs."*

11. Similar issue has been laid down by the Hon'ble Delhi High Court in the case of Spice Infotainment Ltd. Vs. CIT (Delhi) reported in (2012) 247 CTR 500.

12. We therefore, respectfully following the ratio laid down by the above decisions, quash the assessment framed by the AO.

13. Since, we have allowed the appeal on legal issue, therefore, grounds raised on merit are not being adjudicated at this stage and are left open to be decided if need arises for the same in future.

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

Order pronounced on 05.03.2026

| Sd/- | Sd/- |
|---|---|
| **(Pradip Kumar Choubey)** | **(Rajesh Kumar)** |
| **Judicial Member** | **Accountant Member** |

Dated: 05.03.2026
*AK, Sr. PS*

*Copy of the order forwarded to:*

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

//True copy//

By order

Assistant Registrar, Kolkata Benches