

IN THE INCOME TAX APPELLATE TRIBUNAL,
“B “ BENCH, KOLKATA

BEFORE SHRI A.T, VARKEY, JM & DR. A.L. SAINI, AM

ITA No. 1487/Kol/2014 A.Y 2004-05

D.C.I.T, C.C-1, Kolkata	Vs.	M/s. Visa Steel Ltd. PAN: AAACV 8657P
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri Radhey Shyam, CIT/ld.DR
Respondent by : Shri Pratyush Jhunjhunwala, Advocate, ld.AR

सुनवाई की तारीख / Date of Hearing : 05-08-2019

घोषणा की तारीख/Date of Pronouncement: 01-10-2019

आदेश / ORDER

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the revenue, pertaining to assessment year 2004-05, is directed against the order dated 17-04-2014 passed by the Commissioner of Income Tax (Appeals), Central-III, Kolkata in Appeal No. 72/CC-I/CIT(A)C-III/12-13/Kol , which in turn arises out of an assessment order passed by the Assessing Officer u/s. 147/143(3) of the Income-tax Act, 1961 (in short the ‘Act’) dated 31-12-2009.

2. Brief facts qua the issue are that the assessee filed its return of income on 01-11-2004 declaring total income to the tune of Rs.1,91,92,300/-. The assessment was completed u/s. 143(3) of the Act on 21-12-2006 on total income of Rs.2,00,66,520/-. The assessee case was re-opened u/s. 147/143(3) of the Act and assessment was completed on 31-12-2009 by making various additions.

3. Aggrieved by the order of the Assessing Officer the assessee carried the matter in appeal before the ld. CIT(A), who has deleted the impugned additions based on technical issue that the assessee company had been amalgamated w.e.f 01-04-2004. The detailed findings of the ld. CIT(A) to this effect reads as under:-

“APPELLATE ORDER u/s 250(6) Of THE INCOME TAX ACT, 1961

1. Introduction: Substantial Issue on Legality of the impugned assessment Proceedings - same as in AY 2003-04 - Appellant company having already been amalgamated, i.e , ceased to be in existence, since 01.04.2004.

In brief and in short, like in the AY 2003-04, the foremost fundamental issue that needs to be addressed is the legal issue of the validity of the impugned assessment proceedings - as the appellant company had already been amalgamated with Visa Industries Limited with effect from 01.04.2004, approved by the Hon'ble High Court, Orissa, by Order dated 15.10.2004; which is many years prior to the initiation of the impugned reassessment proceedings, initiated by the notice u/s 147 dated 19.03.2009.

2. Decision:

The appellant has thus challenged the legality of the impugned assessment, and inter-alia, the quantum ground too. The grounds of appeal challenging the legality and validity of the impugned assessment are in Grounds No. 1,2,3:

GROUNDS OF APPEAL

The grounds taken hereinafter are without prejudice to one another

- 1. The order under section 147/143(3) dated 31-12-2009 passed by the Assessing Officer needs to be vacated as on the date of passing of order the company was non existent having amalgamated with Visa Industries Limited with effect from 15-10-2004.*
- 2. That on the facts and in the circumstances of the case, the notice dated 19th March 2009 issued u/s. 148 of the Act for the year under consideration by the Assessing Officer is bad in law, void ab initio and is liable to be quashed.*
- 3. That on the facts and in the circumstances of the case, the order dated 31st December, 2009 passed under section 147/143(3) of the Act by the Assessing Officer is bad in law, void ab initio and is liable to be cancelled.*

For the same reasons which I have discussed in my appellate order of same date for the AY 2003-04 in Appeal No. 71 of 2012-13 - as the appellant company had already many years earlier, been amalgamated with Visa Industries Limited with effect from 01.04.2004, approved by the Hon'ble High Court, Orissa, by Order dated 15.10.2004, and thus had since ceased to exist;

thus therefore the initiation of the reassessment vide notice u/ s 147 dated 19.03.2009 is null and void ab-initio.

The impugned assessment order is hereby Annulled.

As I have annulled the impugned assessment order, the other remaining grounds of appeal are not being adjudicated. “

4. Aggrieved by the impugned order of the Id. CIT(A), the revenue is in appeal before us.
5. The learned DR for the revenue has primarily reiterated the stand taken by the assessing officer, which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.
6. On the other hand, the Id. Counsel for the assessee has relied on the impugned order of the Id. CIT(A). He also relied on various case laws available in the paper book of the assessee.
7. We have heard both the parties and perused the material available on record. We note that the solitary grievance of the assessee is the validity of re-assessment proceedings in case of a company, which is not in existence. We note that the assessee company has been amalgamated with M/s. Visa Industries Limited w.e.f 01.04.2004 as per the scheme approved by the Hon'ble High Court of Orissa by order dated 15-10-2004, which is prior to the initiation of notice issued u/s. 147 dated 19-03-2009. We therefore note that re-assessment proceedings on the assessee company, which is not in existence, is null and void. At this juncture, it would be gainful to refer the Judgment of the Hon'ble Bombay High Court in the case of Jitendra Chandralal Navlani 80 tqaxmann.com 107(Bom.).

3. *On receipt of the reopening notice, the Chartered Accountant of the erstwhile M/s. Addler Security Systems Pvt. Ltd., had originally accepted the same but immediately thereafter by letter dated 5th May, 2015 pointed out that the company M/s. Addler Security Systems Pvt. Ltd. is no longer in existence as it has been dissolved. Consequent thereto, the Assessing Officer has also issued a notice under Section 142(1) of the Act to one of the petitioner who was the Director of erstwhile M/s. Addler Security Systems Pvt. Ltd. (since dissolved). In response, the Director of the erstwhile M/s. Addler Security Systems Pvt. Ltd., pointed out that the company has already been dissolved and it is no longer in existence. Notwithstanding the above, the Assessing Officer by an order dated 28th March, 2016 has passed the impugned order framing the assessment in case of M/s. Addler Security Systems Pvt. Ltd. (since dissolved) for Assessment Year 2008-09.*

4. *Normally we would not have entertained a petition as an alternative remedy to file an appeal is available to the petitioners. However, prima facie, the impugned notice has been issued in respect of a non existing entity as M/s. Addler Security Systems Pvt. Ltd., which stands dissolved, having been struck off the Rolls of the Registrar of Companies much before its issue. Consequently, the assessment has been framed also in respect of the non-existing entity. This defect in issuing a reopening notice to a non-existing company and framing an assessment consequent thereto is a issue which goes to the root of the jurisdiction of the Assessing Officer to assess the non-existing company. Thus, prima facie, both the impugned notice dated 24th March, 2015 and the Assessment Order dated 28th March, 2016, are without jurisdiction.*

5. *In the above view, we entertain the present petition and by way of interim relief, grant a stay to the assessment order dated 28th March, 2016 and restrain the Revenue from taking any further proceedings consequent thereto. "*

We note that in assessee's case under consideration, the assessee company amalgamated with M/s. Visa Industries Ltd with effect from 01.04.2004.

The AO issued notice u/s. 147 on 19.03.2019 to reopen the assessment. We note that on 19.03.2019 the assessee company was not in existence, therefore, the reassessment proceedings initiated is null and void. Ld. DR for the revenue relied on the Judgment of the Hon'ble Calcutta High Court in the case of Shaw Wallace Distilleries Ltd 70 taxmann.com 381(Val) which is distinguishable on facts and does not apply to the assessee under consideration; as in this case the assessment was pertaining to financial year ended 31.03.2002 whereas amalgamation took place with effect from November, 2002, therefore, liability of the amalgamating company occurred prior to amalgamation. It would be gainful to refer here legal maxims- "ACTION PERSONALIS MORITURE CUM PERSONA" meaning thereby a personal right of action dies with the death of a person. The assessee company ceased to be in existence w.e.f 1.4.2004, hence the company does not have right to sue after 01.04.2004 therefore, outsiders also cannot sue on the assessee company on or after 1.4.2004. Hence, the assessment made by the AO is not valid in the eye of law.

8 Therefore, based on factual position as narrated above and the case laws cited above, we note that the assessee company had already been amalgamated and ceased to be in existence. Therefore, re-assessment made by the AO vide notice u/s. 147 dated 19.03.2009 is *null and void ab initio*. We uphold the impugned order of the Id. CIT(A) in annulling the same.

9. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on this 01 / 10/2019

(A.T. Varkey)

न्यायिक सदस्य /

JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated:01/ 10/2019

*PP, Sr.PS

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

1. अपीलार्थी / The Appellant- DCIT, CC-1, Kolkata Aaykar Bhawan Poorva
110 Shantipally, Kolkata-107.
2. प्रत्यर्थी / The Respondent.- M/s. Visa Steel Ltd (merged with Visa
Industries Ltd) Visa House, 8/10 Alipore Road, Kolkata-27.
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

//True Copy//

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.