

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAVISH SOOD, JM**

**ITA No.4115/Mum/2017
(Assessment Year :2008-09)**

DCIT, Cent. Cir-7(2) Room No.653, Aayakar Bhavan Mumbai – 400 020	Vs.	M/s. Palm Tech India Ltd (Now merged with Ruchi Soya Industries Ltd.) 614, Tulsiani Chamber, Nariman Point, Mumbai
PAN/GIR No. AABCP2121M		
(Appellant)	..	(Respondent)

Revenue by	Shri Kumar Padmapani Bora
Assessee by	None
Date of Hearing	29/01/2020
Date of Pronouncement	10/02/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.4115/Mum/2017 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax – 49, Mumbai in appeal No.CIT(A)-49/IT-107/2016-17 dated 27/03/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 25/03/2014 by the Id. Dy. Commissioner of Income Tax, Circle-1, Kakinada (hereinafter referred to as Id. AO).

2. The revenue has raised the following grounds of appeal:-

"1. "On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in holding order u/s 147 as invalid merely on ground that notice u/s 148 was issued to the company M/s Palm Tech India Ltd which had already been merged with another company M/s Ruchi Soya Industries Ltd. ignoring the fact that the issued pertains to financial year in which the amalgamation had not taken place ".

2. "On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in treating notice u/s 148, issued to the amalgamating company in the year when it had already amalgamated with another company, as null and void".

3." On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in treating notice u/s 148, issued to the amalgamating company in the year when it had already amalgamated with another company, as null and void without appreciating that the notice though issued in the name of amalgamating company, M/s Palm Tech India Ltd was served onto the amalgamated company, Ruchi Soya Industries Ltd only and the case was represented by the authorized representative from the side of the amalgamated company".

The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary."

2. When the case was called up for hearing, none appeared on behalf of the assessee and no adjournment letter was even placed on record from the side of assessee. Hence, we proceeded to dispose the appeal on hearing the Id. DR and after perusing the materials available on record.

2.1. We find that assessee is a public limited company engaged in the business of extraction and refining of crude palm oil. We find that the erstwhile assessee i.e. Palm Tech India Ltd. had merged with Ruchi Soya Industries Ltd. w.e.f. 01/04/2009 and the scheme of amalgamation had been duly approved by the Hon'ble Andhra Pradesh High Court vide order dated 19/07/2010 and the Hon'ble Bombay High Court vide order dated 09/07/2010. We find that notice u/s.148 of the Act was issued in the

name of Palm Tech India Ltd. by the Id. AO on 26/11/2012, which company was not at all in existence on the date of issuance of the said notice pursuant to the amalgamation. The Id. AO proceeded to frame the assessment u/s.143(3) r.w.s. 147 of the Act on 25/03/2014 in the name of Palm Tech India Ltd., (amalgamating company). We find that the Id. CIT(A) had given a categorical observation that the re-assessment was triggered based on the audit objection dated 27/04/2012. We find even on the date of this audit objection, the erstwhile assessee i.e. Palm Tech India Ltd., was not in existence pursuant to the amalgamation. From the categorical finding given by the Id. CIT(A) in para 7.2 and 7.2.1. of his order, we find that the assessee had duly intimated the fact of merger with Ruchi Soya Industries Ltd. vide several letters to the Id. AO and also during penalty proceedings u/s.271(1)(c) of the Act. The assessee had also given the address of the Registered Office of Ruchi Soya Industries Ltd for further correspondence. Despite of these intimations, the Id. AO proceeded to frame the assessment in the name of amalgamating company i.e Palm Tech India Ltd, which was declared *void ab initio* by the Id. CIT(A) by placing reliance on the decision of the Hon'ble Delhi High Court in the case of Spice Entertainment Ltd. vs. CIT in ITA No.475/Del/2011 among others. We find that the issue in dispute is squarely covered in favour of the assessee by the recent decision of the Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Ltd. reported in 416 ITR 613 (SC) wherein it was held that during the pendency of assessment proceedings, the assessee company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in the name of said non-existing entity could be without jurisdiction and was to be set aside.

2.2. We find that the Id. CIT(A) while quashing the re-assessment proceedings had followed the decision of Hon'ble Delhi High Court in the case of Spice Entertainment Ltd. which also endorsed the same principle as was laid down by the Hon'ble Apex Court supra. Hence, we do not find any infirmity in the action of the Id. CIT(A) for quashing re-assessment. Accordingly, the grounds raised by the revenue are dismissed.

3. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on this 10/02/2020

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 10/02/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai