

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'SMC', NEW DELHI**

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No.402/Del/2020
(Assessment Year : 2011-12)

M/s. S. M. Buildtech Pvt. Ltd., H-23/9, 2 nd Floor, DLF Phase-1, Gurgaon Haryana – 122 002 PAN : AAICS 3283 Q	Vs.	ITO Ward – 24(1) New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Shailesh Gupta, Adv.
Revenue by	Shri R. K. Gupta, Sr. D.R.

Date of hearing:	23.09.2021
Date of Pronouncement:	01.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 03.12.2019 of the Commissioner of Income Tax (Appeals)-8, New Delhi relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company. AO noted on the basis of the information received from Non Filters Management System (NMS) that even though the assessee had received commission/brokerage amounting to Rs.33,27,228/-, but it had not filed its return of income. Therefore notice u/s 148 of the Act was issued and served on the assessee on 29.03.2018. AO noted that in response to the notice issued u/s 148 of the Act, neither assessee attended the assessment proceedings nor filed any return of income. He therefore on the basis of information available in Form 26AS noted that assessee had received Rs.33,27,228/- as commission/brokerage which he considered to be unexplained cash credit in the assessment framed u/s 144 r.w.s 147 of the Act vide order dated 13.11.2018. Aggrieved by the order of AO, assessee carried the matter before the CIT(A), who vide order dated 03.12.2019 in Appeal No.03/12/2019 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds:

1. *“That the Learned CIT(A) has grossly erred both in law and on facts in sustaining an assessment under section 147/144 of the Act at an income of Rs.33,27,228/-.*
2. *That the Learned CIT(A) has further erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act, as the instant reassessment proceedings were without satisfying the statutory pre-conditions for initiation of the proceedings (as the approval so recorded by high authority was non speaking) and, completion of assessment under the Act.*

- 2.1 *That further, the reasons recorded were mere reasons to suspect and were just to make fishing and roving enquiries with no application of mind as no independent enquiry was conducted by the assessing officer before issuing such notice under section 148 and as such, the proceeding initiated under section 148 was a mere pretence.*

3. *That the Learned CIT(A) has grossly erred in law and on facts in passing the order in utter disregard of the statutory provisions contained under section 250(6) of the Act by dismissing the appeal of the appellant ex parte, thereby, violating the principles of natural justice, wherein, the detailed written submissions so filed by the assessee - appellant online, were arbitrarily brushed aside and were not even considered while deciding the instant appeal.*

- 3.1 *That the Learned CIT(A) has ignored various judicial rulings, wherein it has been held that section 250(6) makes it obligatory for the CIT (A) to pass a speaking order deciding the points raised in appeal, stating his reasons for the decision, whereas, Learned CIT(A) has not considered any of the grounds so raised by the assessee - appellant and has also recorded findings which are contrary to material available on record, as last two notices issued by learned CIT (A) were duly complied by assessee — appellant.*

- 3.2 *That the Learned CIT(A) has further failed to appreciate the fact that the reason for non compliance before the assessing officer was family/ personal dispute between the directors of the assessee - appellant and as such, proper opportunity should have been accorded by learned CIT (A) to the assessee - appellant for explaining its case, which he had failed to do.*

4. *That the Learned CIT(A) has further erred both in law and on facts in sustaining an addition of a sum of Rs. 33,27,228/- (which is also factually wrong figure) under section 68 of the Act on account of alleged deposit in bank account, which*

addition is contrary to material available on record and based on conjectures and suspicion and needs to be deleted, as such.

4.1 *That in doing so, the findings so recorded by learned CIT (A) are without consideration of written submissions so filed by the assessee - appellant, wherein, it was categorically explained that the said income was on account of commission income and the same was duly recorded in the assessee's financial statements, and as such, there was no escapement of income and thus, the addition so made should have been deleted.*

5. *That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining addition in the hands of assessee -appellant without giving any fair and proper opportunity of being heard to the assessee, thereby, violating the principles of natural justice."*

4. Thereafter assessee has raised an additional ground which reads as under:

"that the impugned assessment order passed by Learned Assessing Officer is without jurisdiction and void ab initio as the notice issued under section 148 of the Act was on dead entity/non-existent entity, as the assessee company was struck off from ROC records and was dissolved prior to the issuance of notice under section 148 of the Act."

5. With respect to the admission of additional ground, it is submitted that in the additional ground, assessee is challenging the validity of the notice issued u/s 148 of the Act as the notice was issued on non-existent entity. Learned AR submitted that the issue raised in the additional ground is a legal issue and it goes to the root of the matter. He submitted that since all the material facts relevant to the legal issue are already on record and the

issue being a legal issue, it can be raised at any time before the Tribunal. In support of his aforesaid contention, he placed reliance on the decision in the case of **National Thermal Power Co. Ltd. vs. CIT reported in 229 ITR 383** and **Jute Corporation of India Ltd. vs. CIT reported in 187 ITR 688 (SC)**. He therefore submitted that the additional ground of appeal be admitted and appropriate order be passed in the interest of rendering substantial justice. On the issue of admissibility of additional ground, the Learned DR strongly objected to the plea for admission of additional ground.

6. Having heard the rival submissions and considering the submissions made by the Learned AR and following the decision of Hon'ble Apex Court in the case of **National Thermal Power Co. Ltd. (supra)**, I am of the view that the additional ground raised in the present appeal needs to be admitted. I therefore admit the additional ground.

7. On the additional ground. Learned AR submitted that the initiation of proceedings u/s 147 of the Act and consequent assessment framed u/s 144 r.w.s 147 of the Act is without jurisdiction and *void-ab-initio* and hence unsustainable in law. He submitted that the assessee did not exist in the eyes of law on the date when the notice u/s 148 of the Act was issued on 29.03.2018 and the consequent reassessment orders were passed by the AO. He submitted that assessee had made an application u/s 560 of the Companies Act to the office of Registrar of

Companies, Delhi on 09.07.2016 seeking for striking of the name of the company and its dissolution. In support of his aforesaid contention, he pointed to the intimation letter dated 18.07.2016 issued by the Assistant Registrar of Registrar of Companies which is placed at Page 3 of the paper book. He submitted that the aforesaid intimation was also sent by the Registrar of Companies to the office of Chief Commissioner of Income-tax. He submitted that thereafter vide order dated 19.01.2017 issued by Government of India, Ministry of Corporate Affairs and pursuant to the provision of Section 560(5) of the Act, the name of assessee was struck off from the Register of the Companies and same was also intimated to the Income Tax Officer by the Registrar of Companies. He pointed to the copy of the aforesaid letter issued by the Assistant Registrar of the Companies which is placed at Page 3 of the paper book. He thereafter pointed to the notice issued u/s 148 of the Act dated 29.03.2018 by the Assessing Officer for initiating the reassessment proceedings the copy of which is placed at Page 1 of the paper book. Learned AR thus pointed to the fact that on the date of issuance of notice u/s 148 of the Act i.e. on 29.03.2018, the assessee company was no longer in existence as it was already dissolved on 19.01.2017 and therefore the assessment framed on a non-existent entity was *void-ab-initio*. He submitted that the dissolution of the assessee company was brought to the knowledge of the Department by Registrar of companies. He thereafter relying on the decision of Hon'ble Delhi High Court in the case of **Spice Infotainment Ltd vs. Commissioner of Income Tax reported in (2012) 247 CTR**

500 submitted that the assessment in the name of the company which has been amalgamated with another company and stood dissolved is *null and void* and the assessment framed in the name of a non-existing entity was a jurisdictional defect which could not be cured by invoking the provision of Section 292B of the Act. He also relied on the decision of Delhi High Court in the case of **CIT vs. Dimension Apparels (P) Ltd. (2014) 370 ITR 288** wherein it has been held that the assessment framed on a non-existent entity is not a procedural irregularity which could be cured by invoking the provisions of Section 292B of the Act. He therefore submitted that the assessment order could not be passed in the case of assessee more so when the information about its striking off was intimated by the Registrar of Companies to the concerned authorities.

8. Learned DR on the other hand supported the order of lower authorities and submitted that assessee had received commission and brokerage of Rs.33.27 lakhs and despite having such income it had not filed its return of income and when the Revenue/Department proceeded to bring to tax such income, it had *suo moto* applied to the Registrar of Companies for getting its name struck off. He thus supported the order of lower authorities.

9. I heard the rival submissions and perused the materials available on record. It is an undisputed fact that assessee under the provisions of Section 560 of the Act had made an application on 09.07.2016 before the Registrar of Companies for getting its

name struck off from the Register of Companies and its dissolution. The intimation of the receipt of application was issued in the Gazette for publication and its copy was also sent to the Chief Commissioner of Income-tax. Thereafter on 19.01.2017, the name of the assessee was struck from the register of Companies and it was dissolved from that date and the intimation about the same was also given to the Income Tax Officer. Despite the aforesaid, notice u/s 148 of the Act for the reassessment proceedings was issued by the AO on 29.03.2018 when the company was no longer in existence and was dissolved by the orders of the Registrar of the Companies. Thus on the date of issuance of notice u/s 148 of the Act, assessee was no longer in existence. I find that Hon'ble Delhi High Court in the case of **Spice Infotainment Ltd. (supra)** has held that the assessment in the name of company which has been amalgamated with another company and stood dissolved to be *null and void* and the assessment framed in the name of a non-existent company to be a jurisdictional defect which could not be cured under Section 292B of the Act. Before me, Revenue has not placed on record any contrary binding decision in its support. In such a situation, I therefore hold the issuance of notice u/s 148 of the Act on the date on which the assessee was no longer in existence to be invalid and the consequential order passed also to be *void ab initio* and therefore not valid. In such a situation the impugned order passed by the AO deserves to be quashed. I therefore quash the consequential reassessment proceedings. **Thus the ground of the assessee is allowed.**

10. Since the assessment itself has been quashed the other grounds on merit require no adjudication and therefore the other grounds are not adjudicated.

11. **In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on 01.10.2021

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 01.10.2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI