

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.841-843/Chny/2020
निर्धारण वर्ष /Assessment Years: 2003-04 to 2005-06

M/s.Pawan Green Channels Pvt. Ltd., v. The Dy. Commissioner –
No.16, Cenotaph Road, of Income Tax,
Teynampet, Company Circle-V(1),
Chennai-600 018. Chennai.

[PAN: AACCP 4849 H]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.G.Baskar, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Mr.P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing	:	13.12.2022
घोषणा की तारीख /Date of Pronouncement	:	23.12.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

These three appeals filed by the assessee are directed against common order passed by the Commissioner of Income Tax (Appeals)-5, Chennai, dated 29.01.2014 and pertains to assessment years 2003-04 to 2005-06. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

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2. The assessee has, more or less, raised common grounds of appeal for all three assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2003-04, are re-produced as under:

1. The order of the CIT(A) is erroneous, opposed to law and facts and liable to be set aside insofar as the same is passed in a casual and summary manner.

2.1 The CIT(A) erred in upholding the jurisdiction of the AO to reopen the assessment u/s 147 of the Act.

2.2 The CIT(A) having noticed that the law laid down by the Hon'ble Supreme Court having not been followed the order of reassessment ought to have been quashed.

3.1 The CIT(A) erred in upholding a sum of Rs. 17,99,3467- as unexplained investment u/s.69 of the Act.

3.2 The CIT(A) failed to consider that on the one hand, the AO placed reliance on the sworn statement of Mr.Chelladurai, who acted as a Middle man, without even providing an opportunity of cross examination by the Assessee. On the other hand, the AO completely ignored the statement of the same Chelladurai that he received Rs.3.30 cr from Wescare group in his answer to Q.No.12 in his Sworn statement deposed. This statement proves beyond doubt the source and cost of purchase. Wescare books also corroborates to this fact.

3.3 The CIT(A) failed to consider the fact that the AO had determined the market value based on the letter of one M/s. Goldmine Investments which is bad in law.

3.4 The CIT(A) ought to have appreciated the fact that the AO himself at Para 6.4 Page 4 of his order on a presumption determines the market value as under;

"6.4 Above submissions of the assessee are carefully considered and the same are rejected. The rate mentioned in the letter of M/s. Goldmine Investment, even if it is not applicable to the assessee company, it clearly brings out the fact that the market value of the land purchased by the assessee company was at Rs.25 lakhs per ground'

4.1 The CIT(A) failed to appreciate the fact that funds were paid by Wescare pursuant to the agreement dated 27.12.2000 and the entire receipts had been offered for taxation by Wescare during the AY 2005-06, taxing the investments in the hands of the assessee is illegal.

4.2 The CIT(A) failed to consider the fact that the actual value of consideration stands recorded in the books of account and ought to have directed to AO consider the same.

5.1 The CIT(A) erred in upholding interest levied under Sections 234A and 234B of the Act in toto.

5.2 The CIT(A) failed to note that the assessee was under no obligation either to file the return of income or to pay advance tax and as such the levy of interest under these sections is neither warranted nor justified.

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3. The assessee had also filed petition for admission of additional grounds for three assessment years and therefore, for the sake of brevity, additional grounds filed for the AY 2003-04, are re-produced as under:

1.1 The CIT(A) failed to consider the fact that a notice u/s.148 having been issued on a non-existing company the entire re-assessment proceedings is null and void.

1.2 The CIT(A) failed to appreciate the fact that the Appellant company was struck off from the rolls of the Registrar of Companies (RoC) way back in the year 2008 and any notice served subsequent to the strike-off is null and void.

1.3 The CIT(A) ought to have appreciated the fact that the AO proceeded against a non-existing company which is arbitrary and against the provisions of income tax Act; and ought to have annulled the reassessment.

2.1 The CIT(A) failed to appreciate the fact that the AO having violated the mandate of Sec. 151 (2) of the Income Tax Act in as much as he didn't get the approval from the competent authority, the Joint Commissioner of Income-Tax, the reassessment proceedings is void ab-initio.

2.2 The CIT(A) failed to consider the fact that the AO sought approval for issuance of notice u/s.148 from CIT-3 who is not the designated authority to sanction the proceedings as contemplated u/s.151(2).

4. The Ld.Counsel for the assessee at the time of hearing referring to petition filed by the assessee submitted that the assessee had taken two additional grounds challenging validity of notice issued u/s.148 of the Act, by the AO and consequent approval granted u/s.151(2) of the Act, and both grounds are purely legal issues which goes to question the root of the matter and thus, same may be admitted for adjudication.

5. The Ld.DR, on the other hand, opposing the petition filed by the assessee for admission of additional grounds submitted that the assessee could not explain the reasons for not raising these grounds before the lower authorities. Therefore, the same should not be admitted.

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6. We have heard both the parties, perused the materials available on record and considered the petition filed by the assessee for admission of additional grounds and after considering relevant facts, we find that although, additional grounds taken by the assessee is on legal issue which can be taken at any time, including proceedings before appellate authority and thus, in view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT reported in [1998] 229 ITR 383 (SC), we admit the additional grounds of appeals filed by the assessee for adjudication.

7. The first additional grounds taken by the assessee for all three assessment years is validity of notice issued by the AO u/s.148 of the Act, on a non-existing company and consequent re-assessment proceedings. The Ld.Counsel for the assessee referring to notice issued by the AO u/s.148 of the Act, for all three assessment years and written endorsement therein by the Director of the assessee company submitted that the name of the company has been struck off from Registrar of Companies (in short "RoC") u/s.560 of Companies Act, 1956, on 05.04.2008 and thus, re-assessment notice issued u/s.148 of the Act, after dissolution of company is invalid and consequent re-assessment proceedings become null and void. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of CIT, Jaipur v. M/s.Gopal Shri Scrips Pvt. Ltd., reported in [2019] 104 taxmann.com 192 (SC).

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7.1 The Id.DR, on the other hand, referring to provisions of Sec.176(3) of the Act, submitted that even after dissolution of a company, the proceedings will continue and thus, there is no merit in arguments taken by the Ld.Counsel for the assessee, proceedings cannot be initiated on non-existing company. The Ld.DR further submitted that the assessee did not inform the AO about struck off name of the company from the RoC. Unless, the assessee officially communicates to the AO about the dissolution/winding up of company, the AO can very well initiate proceedings to assess or re-assess income pertaining to period prior to winding up of the company.

7.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the legal position taken by the Hon'ble Supreme Court in the case of Pr.CIT v. Maruthi Suzuki India Ltd., reported in [2019] 265 Taxman 515 (SC) notice issued on non-existing company is invalid and consequent assessment proceedings is null and void. The Hon'ble Supreme Court has taken a contrary view in the case of M/s.Gopal Shri Scrips Pvt. Ltd. (supra) and dealt the issue in light of provisions of Sec.560(5) proviso (a) of the Companies Act, 1956, and Chapter-XV of the Income Tax Act, 1961 and held that appeal proceedings can continue even in a case of company whose name has been struck off from RoC u/s.560(5) of the Companies Act, 1956. In the case of Maruthi Suzuki India Ltd., (supra), the Hon'ble Supreme Court has taken note of the fact that the assessee

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has informed the AO about striking off name of the company from RoC u/s.560 of the Act, and even after intimation to the AO, the AO continued to issue notice for assessment proceedings. Therefore, under those facts, the Hon'ble Supreme Court came to conclusion that notice issued to a non-existing company and consequent assessment proceedings are null and void. In so far as the decision of the Hon'ble Supreme Court in the case of M/s.Gopal Shri Scrips Pvt. Ltd., it is in the context of continuing the appeal proceedings when the name of the company has been struck off from RoC and nothing to do with assessment proceedings. From the analysis above two judgments, what we understood is that if the assessee informed the AO about strike off name of the company from the RoC u/s.560 of Companies Act, 1956, and even after information, the AO continued to issue assessment notices on the non-existing company then, the notice issued for assessment/re-assessment and consequent assessment proceedings become null and void. In this case, facts are entirely different although, the name of the company has been struck off from RoC on 05.04.2008 itself, the assessee officially did not communicate to the AO about striking off name of the company. Further, it was only when the notice u/s.148 of the Act, was served to the Director of the assessee company by Notice Server, the Director has written endorsement in the notice about striking of name of the company from the RoC. From the above, it is very clear that the assessee did not inform the AO as required under the law about striking off name of the company from the RoC and

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hence, we are of the considered view that case law referred to by the assessee has no application to facts of the present case and thus, we are of the opinion that there is no merit in the legal ground taken by the assessee on the issue of notice u/s.148 of the Act, and consequent assessment proceedings and hence, the ground taken by the assessee for all three assessment years is rejected.

8. The next issue from the second additional grounds taken by the assessee for all three assessment years is approval of competent authority as required u/s.151(2) of the Act, before issue of re-assessment notice u/s.148 of the Act. The Ld.Counsel for the assessee submitted that approval has been taken from the CIT-III, Chennai, instead of the JCIT/ACIT as required u/s.151(2) of the Act, and consequently notice issued u/s.148 of the Act, is bad in law and void ab-initio.

8.1 The Ld.DR, on the other hand, referring to approval granted by the competent authority u/s.151(2) of the Act, for issue of re-assessment notice submitted that for the AY 2003-04, the CIT-III, Chennai, has approved issue of notice u/s.148 of the Act. However, for the AYs 2004-05 & 2005-06, the ACIT, Range-V, Chennai, has approved notice u/s.148 of the Act. He further fairly admitted that for the AY 2003-04, although, the JCIT is required to be accord approval for issue of notice, but the CIT-III, Chennai, has approved and issued notice u/s.148 of the Act. However, for other two assessment years, the ACIT, Range-V, Chennai, has approved issuance of notice, which is in accordance with law.

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8.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Sec.151 of the Act, Income Tax Act, 1961, prescribes authority for approval of re-assessment notice on different situations and as per provisions of Sec.151(2) of the Act, in case there is no regular assessment was completed for any assessment year, then the JCIT concerned range is competent authority to accord approval for issue of re-assessment notice. In this case, for the AY 2003-04, the Ld.DR fairly agreed that instead of JCIT, the CIT-III, Chennai, has approved issue of notice u/s.148 of the Act. Therefore, we are of the considered view that for the AY 2003-04, the CIT-III has granted approval instead of the Addl. CIT/JCIT as prescribed under the law and thus, notice issued u/s.148 of the Act, on 30.03.2010 for the AY 2003-04, is bad in law and consequent assessment proceedings is null and void. As regards AYs 2004-05 & 2005-06, the Ld.DR placed evidences to prove that the Addl.CIT, Range-V, Chennai, has granted approval for issue of notice and in our considered view said approval is in accordance with law as prescribed u/s.151(2) of the Act and thus, re-assessment notice issued u/s.148 of the Act, and consequent assessment proceedings are valid and thus, we reject the ground taken by the assessee for the AYs 2004-05 & 2005-06. To sum up, notice u/s.148 of the Act, and consequent re-assessment proceedings for the AY 2003-04 is quashed and notice issued u/s.148 of the Act, and consequent re-assessment proceedings for the AYs 2004-05 & 2005-06 are upheld.

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9. In so far as the issue involved in appeals for the AYs 2004-05 & 2005-06, the Ld.Counsel for the assessee submitted that the AO has made additions towards consideration paid for purchase of land as unexplained investment in the hands of the assessee on the basis of survey conducted and consequent statement recorded from Mr.Chelladurai, who claims to be an real estate agent. But facts remain that as per agreement between the assessee and M/s.Wescare (India) Ltd., M/s.Wescare (India) Ltd. is the beneficial owner of lands purchased by the assessee and also consequent compensation/gain arise out of cancellation of agreement, etc., has been considered in the hands of benefitted owner. Further, M/s.Wescare (India) Ltd., had offered income arising out of land transactions and thus, further addition in the hands of the assessee towards difference in price paid for purchase of land as unexplained investment amounts to double addition. Therefore, to verify the facts and to decide the issue in accordance with law, the matter may be set aside to the file of the AO.

9.1 The Ld.DR, on the other hand, submitted that the assessee is a legal entity and income pertains to the assessee should be offered in the hands of the assessee. Therefore, there is no merit in the arguments of the Ld.Counsel for the assessee, that M/s.Wescare (India) Ltd., had offered income out of land transactions and thus, there is no need to set aside the issue to the file of the AO.

9.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is the

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arguments of the Ld.Counsel for the assessee that the assessee acted as an aggregator of land for M/s.Wescare (India) Ltd., and further, M/s.Wescare (India) Ltd., has offered income arises out of land transactions. In this regard, he has filed financial statements of M/s.Wescare (India) Ltd., along with agreement between the parties and argued that M/s.Wescare (India) Ltd., has offered income under the head 'other income' towards compensation for sale of land. Therefore, further addition in the hands of the assessee on very same transaction amounts to double addition. We find that the AO has treated difference between consideration paid for purchase of land as per books of accounts of the assessee and as per statement of Mr.Chelladurai as unexplained investment in the hands of the assessee. The assessee claimed that entire land transaction has been owned up and also income arises out of land transaction has been offered by M/s.Wescare (India) Ltd. We find that if at all the claim of the assessee is correct, then, the question of making further additions in the hands of the assessee towards very same land and consequent compensation / gain does not arise. But, facts remain that whether M/s.Wescare (India) Ltd., has considered the transaction in their books of accounts and also offered to tax compensation / profit arise out of land transactions is not clear. Therefore, we are of the considered view that the issue needs to go back to the file of the AO for both the assessment years to re-examine the claim of the assessee in light of agreement between the parties and also claim of the assessee that M/s.Wescare

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(India) Ltd., had offered the income in their hands. Hence, we set aside the issue for both the assessment years to the file of the AO and direct the AO to re-examine the claim in light of various averments made by the assessee and decide the issue in accordance with law.

10. In the result, appeal filed by the assessee for the AY 2003-04 is allowed and appeals filed by the assessee for the AYs 2004-05 & 2005-06 are allowed for statistical purposes.

Order pronounced on the 23rd day of December, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 23rd December, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF