

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 2005/DEL/2021
Assessment Year: 2009-10**

ACIT Circle 25(1), New Delhi.	<u>Vs</u>	Vibhu International Ltd. (Formerly known as Core International Ltd.) 316, Express Tower, Commercial complex Azadpur, Delhi-110033. PAN: AAFCM7101G
APPELLANT		RESPONDENT
Assessee represented by	Shri Sanjay Kumar Agarwal, CA & Shri Lakshay Gupta, CA	
Department represented by	Shri Amit Katoch, Sr. DR	
Date of hearing	31.08.2023	
Date of pronouncement	05.09.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the Revenue, is directed against the order of the learned Commissioner of Income-tax (Appeals)-30, New Delhi, dated 18.03.2020,

pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

“1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in quashing the order on technical ground of order being in the name of merged company.

2. Whether on the facts and circumstances of the case, the CIT(A) was justified in not deciding the case on merits and thus deleting the addition of above application money of Rs. 11,75,51,436/-

3. Whether on the facts and circumstances of the case, the CIT(A) was correct in not appreciating the observation in case of Marshall Sons & Co. (India) Pvt. Ltd. 233 ITR 809 (SC), companies and that if it is made in the name of an amalgamated company it should be set aside following the principal laid down in Kamlesh Kumar Mehta Vs. CIT(1977) 106 ITR 855 (Cal) and Roshan Lai, (1982) 134 ITR (Del).

4. Whether on the facts and circumstances of the case, the CIT(A) was correct in not appreciating the observation of the Apex Court in the case of Sky Light Hospitality LLP v. ACIT [2018] 92 taxman.com 93 (SC) that Re-assessment notice issued in name of erstwhile company ceasing to exist as it had been converted into LLP would not invalidate re-assessment proceedings as wrong name mentioned in said notice was merely a clerical error which could be corrected under section 292B.”

2. At the time of hearing learned DR vehemently argued that learned CIT(A) was not justified in allowing the appeal of the assessee and holding the assessment order as bad in law on account of the fact that the AO issued notice u/s 148 of the Income-tax Act, 1961 (the “Act”) to M/s Mangalam Infotech Ltd. which was merged with M/s Core International Ltd. w.e.f. 01.04.2013 vide order of the Hon’ble Delhi High Court dated 06.08.2014.

3. On the contrary learned counsel for the assessee reiterated the submissions as made in the synopsis. Learned counsel submitted that M/s Mangalam Infotech Pvt. Ltd. was incorporated on 11.05.2007. Thereafter, M/s Mangalam Infotech Pvt. Ltd. merged with M/s Core International Ltd. vide order of the Hon'ble Delhi High Court dated 06.08.2014. Vide letter dated 30.09.2014 the assessee requested the ITO, Ward-6(2), New Delhi, for cancellation of PAN of M/s Mangalam Infotech Pvt. Ltd. on account of amalgamation and transfer of records to the then AO of M/s Core International Ltd. On 20.07.2015 name of M/s Core International Ltd. was changed to Vibhu International Ltd. Subsequent to the filing of letter the AO issued notice dated 31.03.2016 u/s 148 in the case of M/s Mangalam Infotech Pvt. Ltd. bearing PANAAF7101G. During the course of assessment proceedings the assessee company challenged the issuance of notice. Learned counsel submitted that the learned CIT(A) has rightly quashed the assessment being illegal. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of Pr.CIT Vs. Maruti Suzuki [2019] 107 Taxmann.com 375 (SC). Learned counsel submitted that the judgment of the Hon'ble Supreme Court in the case of PCIT Vs. Mahagun Realtors (P) Ltd. [2022] 137 Taxmann.com 91 (SC) is distinguishable on facts as in the present case the assessee had informed the AO well before the issuance of notice.

4. We have heard rival contentions and perused the material available on record. We find that the assessment was reopened u/s 147 of the Act by issuing notice u/s 148 of the act which admittedly was issued in the name of M/s Mangalam Infotech Pvt. Ltd. Therefore, the initiation of proceedings against a non-existent entity is bad in law. Learned CIT(A) has decided the issue by observing as under:

“15. I have examined the facts at hand. I have considered the assessment order, written submissions of the appellant and case law relied upon by the appellant. The main ground under consideration is as to whether the reassessment notice issued to the appellant which is the amalgamating company, after the date when which the appellant company stood amalgamated, was correct in law to invoke jurisdiction on the amalgamating company i.e. the appellant. For appreciation of the issue, the date-wise sequence of events is necessary to be discussed in brief. The appellant i.e. M/s Mangalam Infotech Pvt. Ltd. was the amalgamating company and was amalgamated with M/s Core International Ltd., vide order of Hon’ble Delhi High Court dated 06.08.2014. The appellant company vide its letter dated 30.09.2014 which was submitted to the ITO, Ward-6(2), New Delhi on 11.11.2014, the appellant had intimated the AO {then ITO, Ward-6(2) and now the ITO, Ward-16(2), New Delhi regarding amalgamation, to transfer all records of the appellant with the concerned AO of M/s Core International Ltd. and also requested for cancellation of PAN of the appellant. As mentioned in the pre paras, the ITO, Ward-16(2), New Delhi has confirmed vide letter dated 29.11.2019 addressed to the Director of M/s Vibhu International Ltd. that the letter dated 30.09.2014 with subject, intimation regarding amalgamation and request for cancellation of Permanent Account Number AAFCM7101G was received in

the then ITO, Ward06(2) Delhi (now ITO, Ward-16(2), Delhi) office and its entry with entry number 608, dated 10.11.2014 is existing in the receipt register. Thereafter, the ITO, Ward 16(2) issued notice u/s 148 of the Act, to the appellant i.e. the amalgamating company: M/s Mangalam Infotech Pvt. Ltd. on 31.03.2016. the appellant challenged the issue of the said notice and th same has been discussed on page 2 of the assessment order, which has been reproduced above. The appellant vide its letter dated 03.11.2016 addressed to the AO had stated that issuance of the notice in the case of M/s Mangalam Infotech Pvt. Ltd. for A.Y. 2009-10 was invalid and unjustified because existence of the appellant company was no more in view of the order dated 06.08.2014 passed by the Hon'ble Delhi High Court, New Delhi. And that intimation in the regard was already made by the appellant company with then Income Tax Officer ward-6(2) New Delhi on 10.11.2014 vide letter dated 30.09.2014. In the said letter the appellant company had also made a request to the concerned Assessing Officer for cancellation of PAN of the company and transfer of their record with the assessing Officer of amalgamating company i.e. M/s Core International Ltd.

Thereafter, it has been stated that the appellant had sent back the notice u/s 142(1) of the Act dated 26.10.2016 issued for A.Y. 2009-10 to the AO in original (with envelope) for cancellation purposes. However, the Assessing Officer rejected the plea of the appellant, stated that notices issued u/s 148 and 142(1) of the Act were valid and within jurisdiction and proceeded to complete the assessment. The assessment order was passed in the name of M/s Vibhu international Limited (formerly known as M/s Core International Ltd.) w.e.f. 01.04.2013 in the ease of M/s Mangalam Infotcch Pvt. Ltd. mentioning PAN: AAFCM7101G, which is of the amalgamating company i.e. M/s Mangalam Infotcch Pvt. Ltd. on 29.12.2016.

From the above, it is evident that the nonce n/s 148 of the Act, which, was issued on 31.03.2016 by the AO was later than the date of order of amalgamation of the appellant, which was the amalgamating company, vide order of Hon'ble Delhi High Court dated 06.08,20 I 4. The appellant had duly intimated the said change in status of the company vide its letter dated 30.09.2014 which was submitted in the office of the AO on 10.11.2014. The appellant vide its letter dated 20.12.2016 again

requested the AO that the proceedings u/s 147/148 of the Act was without jurisdiction and requested that the said notice be withdrawn. As discussed above, the assessment order passed by the AO on 29.12.2016. It is a fact that the impugned notice u/s 148 of the Act, was issued to the appellant on 31.03.2016 to reopen the assessment for the A.Y. 2009-10. It is also an undisputed fact, that the appellant was ordered to be amalgamated with M/s Core international Limited. The scheme of amalgamation was sanctioned by Hon'ble Delhi High vide its order dated 06.08.2014. Under the circumstances, the notice issued against the original assessee - amalgamating company on 31.03.2016 was against the non-existing company. It is clear that once the scheme of amalgamation has been sanctioned, from the date of amalgamating company which is the appellant would not be in existence. The Hon'ble Supreme Court in the case of Pr. CIT Vs. Maruti Suzuki India Limited, CA No. of 2019 dated 25.07.2019 has pronounced that 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 the 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. Taking into consideration the above judicial pronouncements, it is held that notice u/s 148 of the Act, issued to the appellant cannot be sustained in law and is accordingly quashed. Accordingly, the appellant gets relief on this ground.

16. The concised grounds of appeal had been submitted to this office by the appellant on 06.08.2018, as discussed at para 6 above. The appellant gets relief on the first ground as discussed in the pre para. Since it is held that the foundational jurisdictional requirement for the purpose of making reassessment is missing, the remaining two ground of appeal become academic and are not adjudicated upon.”

5. Revenue could not rebut the fact that notice was issued in the name of a non-existent entity. The factum of amalgamation was intimated to the AO even before the issuance of notice u/s 148 of the Act. The assessee had intimated and requested the AO to cancel the PAN in the name of M/s Mangalam Infotech Pvt. Ltd.

Therefore, in the light of the judgment of the Hon'ble Supreme Court rendered in the case of Pr.CIT Vs. Maruti Suzuki (supra), we do not see any infirmity into the order of learned CIT(Appeals) and the same is hereby affirmed. Grounds raised by the Revenue are rejected.

6. Appeal of the Revenue is dismissed.

Order pronounced in open court on 5th September, 2023.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI