

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.564/Ahd/2020
(Assessment Year: 2014-15)

M/s. Rahil Marketing Pvt. Ltd., (Now known as & Amalgamated with Adella Enterprise P. Ltd.), Adella Enterprise P. Ltd., D/407, Sumel Business Park-6, Near Gurudwara, Dudheshwar, Ahmedabad-380004	Vs.	The Deputy Commissioner of Income Tax, Circle-3(1)(2), Ahmedabad
[PAN No.AABCA6174F]		
(Appellant)	..	(Respondent)

Appellant by :	Shri M. K. Patel, A.R.
Respondent by:	Shri Kamlesh Makwana, CIT D.R.

Date of Hearing	26.09.2023
Date of Pronouncement	04.10.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax(Appeals)-7,(in short “Ld. CIT(A)”), Ahmedabad in Appeal No. CIT(A)-7/303/16-17 vide order dated 27.11.2017 passed for Assessment Year 2014-15.

2. The assessee has taken the following grounds of appeal:-

“1. That on facts, and in law, the assessment order deserves to be quashed as it is framed on a non existing entity, as Rahil Marketing P. Ltd. had already amalgamated with Adelle Enterprise P. Ltd. vide

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order of Hon'ble High Court of Gujarat, and order passed on a non entity is a nullity and void ab initio.

2. *That the fact of amalgamation and order of Hon'ble High Court of Gujarat were already communicated to the learned AO on 10/06/2015 i.e. even before the assessment order was passed.*

3. *That the learned AO and CIT(A) have grievously erred in not giving reasonable and sufficient opportunity of hearing and in passing ex-parte orders as the notices of hearing were not received by the appellant as it was not in existence due to amalgamation with Adella Enterprise Ltd.*

4. *That the learned CIT(A) has grievously erred in dismissing the appeal for want of prosecution and in not deciding the appeal on merits by giving a speaking order on each of the grounds of appeal.*

5. *That the learned CIT(A) has grievously erred in confirming the additions made towards disallowance of loss of Rs.99,46,120/-, share premium Rs.11,62,75,500/- and unsecured loans of Rs.2,33,51,761/-, totaling to Rs.14,95,73,381/-.*

6. *The appellant craves liberty to add, alter, amend any ground of appeal.”*

3. Before us, at the outset, the Counsel for the assessee has taken the technical ground that the order passed by the Ld. Assessing Officer is invalid in the eyes of law since the assessment order has been passed in the

name of an entity which has since amalgamated. The Counsel for the assessee drew our attention to page 1 of the paper book, in which an intimation was filed by the assessee with the request for cancellation of Permanent Account Number (PAN) on the ground that as per order of Court, the assessee has merged with Adella Enterprise Private Ltd. As per the assessee, the aforesaid letter was filed on 10-06-2015, whereas the assessment order was passed on 10-10-2016. Therefore, in view of various judicial precedents which have held that an assessment order passed in the name of non-existent entity is invalid in the eyes of law, the Counsel for the assessee submitted that the aforesaid assessment order be directed to be set aside as void *ab initio*.

4. In response, the Ld. DR submitted that the aforesaid letter on which reliance has been placed by the assessee was never filed/submitted before the Assessing Officer during the course of assessment proceedings. In the various judicial precedents, on which reliance has been sought to be placed by the Counsel for the assessee, such intimation was brought to the knowledge of the Assessing Officer during the course of assessment proceedings. Further, even in the appeal Form number 35 filed with Ld. CIT(Appeals), the assessee has still mentioned the name as Rahil Marketing Private Ltd and therefore, the aforesaid contention of the assessee cannot be taken as being correct. Further, the Ld. DR pointed out that even before Ld. CIT(Appeals) this contention was not raised since none appeared on behalf of the assessee before CIT (Appeals). Accordingly, since the fact of merger was not brought to the notice of the Assessing Officer during the course of

assessment proceedings or even before Ld. CIT(Appeals), the assessment order cannot be set aside on the grounds of the same being void *ab initio*.

5. We have heard the rival contentions and perused the material on record. In the case of **PCIT v. Maruti Suzuki India Ltd 107 taxmann.com 375 (SC)**, the Hon'ble Supreme Court held that where assessee company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity, would be without jurisdiction and was to be set aside. In the case of **Vahanvati Consultants (P.) Ltd.138 taxmann.com 52 (SC)**, the Hon'ble Supreme Court held that where assessee-company merged into another company under an approved scheme and thereby lost its existence and order of said merger was available to revenue, impugned notice issued under section 148 in name of non-existent company was bad in law. In the case of **Micra India (P.) Ltd.57 taxmann.com 163 (Delhi)**, the Hon'ble held that where assessee-company had amalgamated with transferee-company, notice under section 153C ought to have sent to latter, and since such notice had not been issued to transferee-company, assessment made in hands of assessee-company was a nullity. In the case of **FedEx Express Transportation v. DCIT 108 taxmann.com 542 (Mumbai - Trib.)**, the ITAT held that where draft assessment order under section 144C was passed in name of amalgamating company, which was a non-existent entity in eyes of law on date of passing of such order, it became an illegal order and, thus, entire assessment proceedings based on such an invalid draft assessment order were void *ab initio* and deserved to be quashed. In the case of **Siemens Ltd. v. DCIT 147 taxmann.com 118**

(**Mumbai - Trib.**), the ITAT held that where draft assessment order under section 144C was passed in name of amalgamating company, which was a non-existent entity on date of passing of such order, it became an illegal order and thus, entire assessment proceedings based on such an invalid draft assessment order were void ab initio and deserved to be quashed. In the case of **Boeing India (P.) Ltd. v. ACIT 121 taxmann.com 276 (Delhi - Trib.)**, the ITAT held that where draft assessment order under section 144C was passed in name of amalgamated company which was non-existent company, said order was void ab initio. In the case of **Dimension Data Asia Pacific PTE Ltd. v. DCIT 96 taxmann.com 182 (Bombay)**, the Hon'ble High Court held that where in case of foreign assessee, Assessing Officer passed final assessment order under section 144C(13), read with section 143(3) without passing a draft assessment order under section 144C(1), said order being violative of provisions of section 144C(1), deserved to be set aside. In the case of **Vedanta Ltd. v. ACIT 126 taxmann.com 283 (Delhi - Trib.)**, the ITAT held that Draft/final assessment order framed in name of non-existent entity is void ab initio and such order is not curable defect under section 292(b).

6. In the instant facts, it is observed that an intimation was filed by the assessee with the request for cancellation of permanent account number (PAN) on the ground that as per order of Court, the assessee has merged with Adella Enterprise Private Ltd. The aforesaid letter was filed by the assessee on 10-06-2015 where copy of Court order approving the merged was also filed with the Department, whereas the assessment order was passed on 10-10-2016. Therefore, evidently, at the time when the

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assessment order was passed, the Ld. Assessing Officer was aware that the assessee had merged with another company i.e. Adella Enterprise Private Ltd. Further, contents of the above letter filed with the Department have not been denied / disputed by Ld. Departmental Representative. In our view, the view of the Courts and Tribunals on this issue is unanimous that once the assessment order have been passed in the name of a non-existent entity and this fact of amalgamation has been intimated to the Department, then the said order is void ab initio. In view of the above settled position of law, we are of the view that the assessment order is void and hence liable to be set aside.

7. In the result, assessee's appeal challenging the validity of the order passed in the name of the non-existent entity is allowed.

8. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on	04/10/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 04/10/2023

TANMAY, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad