

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SH. NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**I.T.A. Nos. 9643, 9644 & 9645/Del/2019
(Assessment Years : 2012-13, 2013-14 & 2014-15)**

DCIT,
Central Circle – 26,
New Delhi

Vs. KCJ Buildtech Pvt. Ltd.
B-163, 1st Floor, Amar
Colony, Lajpat Nagar,
New Delhi

[PAN No. AACCK 8322 Q]

And

**CO Nos. 30, 31 & 32/Del/2023
(in ITA Nos. 9643, 9644 & 9645/Del/2019)
(Assessment Years : 2012-13, 2013-14 & 2014-15)**

KCJ Buildtech Pvt. Ltd.
B-163, 1st Floor, Amar
Colony, Lajpat Nagar,
New Delhi

Vs. DCIT,
Central Circle – 26,
New Delhi

(Appellant)

..

(Respondent)

Appellant by : Ms. Shilpi Jain, C.A.

Respondent by : Ms. Monika Dhami, CIT-D.R.

Date of Hearing 07.05.2024

Date of Pronouncement 15.05.2024

ORDER

PER BENCH:

The instant bunch of appeals and cross objections filed by the Revenue and the assessee respectively are directed against the orders

dated 16.10.2019 (for A.Ys. 2012-13, 2013-14 & 2014-15) passed by the Commissioner of Income Tax (Appeals)-29, New Delhi under section 153C r.w.s 144 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the orders dated 26.12.2018 passed by the Asst. Commissioner of Income Tax, Central Circle – 26, New Delhi for the Assessment Years 2012-13, 2013-14 & 2014-15 respectively.

2. Since all the appeals relate to the same assessee and the facts of the case are identical, the same are heard analogously and are being disposed of by a common order for the sake of convenience.

3. At the time of hearing of the instant case, the assessee before us, raised objection against the order passed by Learned AO on the jurisdictional issue to this effect that the order impugned was passed in the name of a non-existing company. In that view of the matter, the entire proceeding is vitiated and thus liable to be quashed as the crux of the argument advanced by the Learned Counsel appearing for the assessee.

4. Since the maintainability of the proceeding has been challenged by the assessee before us, which in our considered opinion, should be decided at the very threshold of the matter. We thus, would like to proceed with the cross objections filed by the assessee wherein such ground has been raised.

5. CO No. 30/Del/2023 (arising out of ITA No.9643/Del/2019) for A.Y. 2012-13 is, therefore, taken as a lead case.

6. The brief facts leading to this case is this that the assessee before us filed its return of income under section 139(1) of the Act on 26.09.2012 declaring income at Rs.5,883/-. Subsequently, a search under section 132 of the Act was carried out in the case of Anand Kumar Jain and Naresh Kumar Jain (Jain Group) on 17.12.2015, wherein various documents/books of account were found and seized. Upon examination of those seized materials, it was found that the said Anand Kumar Jain and Naresh Kumar Jain were engaged in the business of providing accommodation entries to various beneficiaries through various dummy/paper companies including the assessee company controlled and managed by those Jain brothers in order to provide accommodation entries to such beneficiaries in lieu of cash received by them and after relating the cash money from one company to the other and so on. It was further found by the Revenue that the Bank accounts of those companies were also managed and controlled by those Jain brothers.

7. As the assessee was found to be one of those paper companies of Jain brothers, on the basis of the entries in the coded name of the assessee found in the seized documents being Annexure No.13, Tally Data (Hard Disk) ledger name AJ and AJ1, satisfaction note was recorded by the Learned AO of the searched person and also by the Learned AO of the person other than the searched person notice under section 153A/153C of

the Act was issued on 28.03.2018 directing the assessee to file return of income within 15 days from the date of receipt of the said notice. However, since nothing was forthcoming, further notice dated 20.09.2018 was served upon the assessee by affixing on the premises of the assessee. However, since no compliance was made by the assessee, the reassessment proceeding was finalized upon making addition of Rs.2,22,96,490/-, the amount credited in the Bank account of the assessee received from shell/paper concerns and from various beneficiaries of accommodation entries upon treating the same as unexplained entries and added to the total income of the assessee under Section 68 of the Act as assessee's income from undisclosed sources on protective basis. It was further mentioned in the said order that substantive addition to be made in the hands of the beneficiaries. The said order was passed by the Learned AO on 26.12.2018.

8. The case of the assessee is this that the company name was struck off by the ROC on 16.01.2017 by and under application dated 06.07.2016 before the order of Learned AO and therefore, the order passed by the Learned AO is admittedly issued on non-existing company. The entire proceeding is therefore, vitiated and thus liable to be quashed. In this regard, the Learned Counsel appearing for the assessee has drawn our attention to one order passed by the same ACIT, Central Circle – 26, New Delhi dated 19.12.2018 in the case of another assessee namely M/s. Nine corporate Inception Pvt. Ltd. wherein the fact of striking of the name of the assessee in the instant case by ROC has been mentioned. In

that view of the matter, it has been contended by the Learned AR though admittedly, the Assessing Officer was of the knowledge that the assessee's name has been struck off by the role of ROC in spite of the same, assessment order was finalized on 26.12.2018 in the name of KCJ Buildtech Pvt. Ltd. Such contention made by the Learned AR has not been able to controverted by the Learned DR.

9. We have heard the respective parties and also perused the relevant materials available on record including the orders passed by authorities below. We have further considered the fact of striking of by the ROC on 16.01.2016 which is appearing at page 1 filed by the assessee on 03.08.2023. It is an admitted position that though the initiation of the proceeding was made by issuance of notice under section 153A/153C of the Act dated 28.03.2018 on the assessee, namely; M/s. KCJ Buildtech Pvt. Ltd., during the pendency of such proceedings, the name of the assessee was struck off by the role of ROC on 16.01.2017 by its application dated 06.07.2016 at page 1 of the paper book and knowledge whereof with AO is evident from assessee at pages 17-18 in the assessment order dated 19.12.2018 in the case of different assessee M/s. Nine Corporate Inception Pvt. Ltd. (formerly known as M/s. SKM creation Pvt. Ltd.) noted by the same Assessing Officer being ACIT, Central Circle – 26, New Delhi, the contents whereof is as follows:

“6.3 During the course of assessment proceedings it is noticed that in the following concerns assessment proceedings are pending and following companies are struck off by Sh. Anand Kumar Jain and Sh. Naresh Kumar Jain out of above 53 concerns.

<i>S.No.</i>	<i>Name of the assessee</i>	<i>PAN</i>
1.	<i>Ceram Sales Pvt. Ltd.</i>	<i>AADCC0084A</i>
2.	<i>Chandra Buildcon Pvt. Ltd.</i>	<i>AACCC5263G</i>
3.	<i>CVH Sea Lifes Ltd.</i>	<i>AACCC5820B</i>
4.	<i>Gomati Consultants Pvt. Ltd.</i>	<i>AACCG3616M</i>
5.	<i>Jai Maa Bhawani Overseas Pvt. Ltd.</i>	<i>AABCJ0239L</i>
6.	<i>JKS Impex Pvt. Ltd.</i>	<i>AABCJ6878R</i>
7.	<i>Karda Traders Pvt. Ltd.</i>	<i>AADCK7802Q</i>
8.	<i>KCJ Buildtech Pvt. Ltd.</i>	<i>AACCK8322Q</i>
9.	<i>M3M Traders Pvt. Ltd.</i>	<i>AACCD3923E</i>
10.	<i>Macro IT System Pvt. Ltd.</i>	<i>AAECM7259E</i>
11.	<i>Next Generation Exim Pvt. Ltd.</i>	<i>AACCN9821B</i>
12.	<i>Sai Infoweb Pvt. Ltd.</i>	<i>AALCS5794H</i>
13.	<i>Shivij Garments Pvt. Ltd.</i>	<i>AALCS3760M</i>
14.	<i>Sunshine Inn Pvt. Ltd.</i>	<i>AAACS2056D</i>
15.	<i>Yunan Sales Pvt Ltd.</i>	<i>AAACY2963R</i>
16.	<i>Zeus Inpex Pvt. Ltd.</i>	<i>AAACZ3569Q</i>
17.	<i>Shivangi Garments Pvt. Ltd.</i>	<i>AALCS3265J</i>
18.	<i>Kanu Peripherals Pvt. Ltd.</i>	<i>AADCK3958P</i>
19.	<i>New Era Tradeexpo Pvt. Ltd.</i>	<i>AACCN8169N</i>
20.	<i>Sapphire Polyvinyl Pvt. Ltd.</i>	<i>AARCS2813D</i>
21.	<i>Jay Enn Infotech Pvt. Ltd.</i>	<i>AAACJ9991N</i>

10. In the light of the above facts, it is crystal clear that the knowledge of the sticking of the name of the assessee from ROC was with Assessing Officer as on 19.12.2018 being the date of assessment order in respect of the other assessee which under any circumstances cannot be denied by the Revenue authorities, in spite of that, the Assessing Officer in the instant case as proceeded with the assessment proceedings and finalized the same under section 153C r.w.s 144 of the Act dated 26.12.2018. Therefore, order in the case of KCJ Buildtech Pvt. Ltd. is not sustainable in the eyes of law since the said company was not in existence at that material point of time at all. The assessment proceeding, is, thus found to be not maintainable as the assessment

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order suffers from jurisdictional error. The order is, therefore, admittedly being issued in the name of a non-existing company which has no value in the eyes of law; in fact such irregularities vitiated the entire proceedings and therefore, the same is liable to be quashed. We, thus, with the above observation quash the entire assessment proceedings initiated against the assessee. In the result, Cross objections is allowed.

11. In the result, all the Cross Objections are allowed.

ITA Nos. 9643, 9644 & 9645/Del/2019 for A.Ys. 2012-13, 2013-14 & 2014-15 :

12. The appeals filed by the Revenue arising out of the CIT(A)'s order passed in the said proceedings are, therefore, also found to be not maintainable and, hence dismissed.

13. In the combined result, all the Cross Objections filed by assessee in CO Nos.30, 31 & 32/Del/2023 are allowed and all the appeals filed by Revenue in ITA Nos.9643, 9644 & 9645/Del/2019 are dismissed.

This Order pronounced in Open Court on 15/05/2024

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER
Dated 15/05/2024

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI