

ITAT No. 241 of 2011
GA 2558/2011
GA 2559/2011

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, CENTRAL-I, KOLKATA

Versus

M/S. S R M B UDYOG LTD.

BEFORE:

The Hon'ble JUSTICE KALYAN JYOTI SENGUPTA

The Hon'ble JUSTICE JOYMALYA BAGCHI

Date : 8th November, 2011.

The Court : It is difficult for us to entertain the application for condonation of delay in filing the appeal and also to admit the appeal for the following facts and reasons.

The respondent before us, one M/s. SRMB Udyog Ltd., is no longer in existence in view of the order of amalgamation dated June 12, 2009 passed by this Court. This respondent company has been amalgamated with the company called SRM Srijan Ltd., being the transferee company. It appears from the certified copy of the judgment and order that the department preferred appeal against SRMB Udyog Ltd. It further appears that the appeal was preferred prior to November 4, 2010 against the order dated March 31, 2010 passed by the Commissioner of Income Tax(Appeals). Therefore, the appeal before the learned Tribunal was preferred against a non-existent company in view of the amalgamation as aforesaid.

Under the provisions of the Companies Act, 1956, effect of amalgamation is winding up of the transferor company. Moreover, from the terms of the amalgamation which have been accepted by this Hon'ble Court, it appears that whatever proceedings were pending or were sought to be initiated after the date of the order of amalgamation, were to to done against the transferee company. Under such circumstances, we could gather from the facts that the appeal was preferred by SRMB Udyog Ltd. before the Commissioner of Income Tax after the order of amalgamation was passed; similarly the department preferred an appeal subsequently.

It is settled law that no proceedings can be brought against a non-existent person either natural or artificial. Since we are not in a position to grant any relief as we are not admitting the appeal, we therefore grant liberty to the department to take steps in accordance with law so that both the orders passed by the Commissioner of Income Tax(Appeals) and the impugned judgment and order can be lawfully dealt with by subsequent proceedings. We do not know whether the factum of amalgamation was brought to the notice of the Commissioner of Income Tax(Appeals) or before the learned Tribunal. Significantly, the appeal was preferred by M/s. SRMB Udyog Ltd. before the Commissioner of Income Tax(Appeals) when it had no authority to do so in terms of the order of the Company Court. We have made the above observations as we could gather from the records by ourselves.

With the above observations, we dismiss the condonation application; consequently appeal and the connected application also stand dismissed.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(KALYAN JYOTI SENGUPTA, J.)

(JOYMALYA BAGCHI, J.)