

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

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 5301 to 5305/Del/13

AY: 2004-05 to 2008-09

And

ITA No. 5306/Del/13

AY: 2003-04

M/s Images Credit and Portfolio (P) Ltd. vs. ACIT, Central Circle 21
(Amalgamated with New Delhi
Sainath Associates Pvt.Ltd.)
B 19, Pamposh Enclave, G.K. I
New Delhi

PAN: AADCS 6195 C

&

ITA No. 5418 to 5423/Del/13

AY: 2003-04 to 2008-09

DCIT, Central Circle 21 vs. M/s Image Credit and Portfolio Ltd.
New Delhi (Amalgamated with Sainath Associates
Pvt.Ltd.)
New Delhi

(Appellant)

(Respondent)

Appellant by	:	Shri Kapil Goel, Adv. Shri BK Dhingra, C.A.
Respondent by	:	Shri R.I.S.Gill, CIT, D.R.

ORDER

PER BENCH :

These are Cross Appeals directed against a common order passed by the Ld.CIT(Appeals)-II, New Delhi dated 16th July, 2013 pertaining to the Assessment Years 2003-04 to 2008-09.

2. Since the facts and grounds of the appeals in all the Assessment Years are more or less common, we shall consider the facts and grounds

of appeal for the Assessment Year 2003-04, and the decision arrived at for the Assessment Year 2003-04 would be equally applicable to other Assessment Years from 2004-05 to 2008-09.

3. Ground no.5 of the assessee's appeal which is against the validity of the issue of notice under Section 153C of the Act and consequently the completion of assessment in pursuance thereto, reads as under.

“5. That on the facts and circumstances of the case and the provision of law, the Ld.CIT(Appeals) has failed to appreciate that initiation of proceedings under Section 153C including issue of notice and also completion of assessment on the company which has already become non-existent on account of its merger with other company is illegal and bad in law as such the assessment being bad in law deserves to be quashed.”

4. The facts of the case are that there was a search and seizure action under Section 132 of the Income Tax Act (the Act) in the cases of Shri BK Dhingra, Smt.Poonam Dhingra and M/s Madhusudan Buildcon Pvt.Ltd., New Delhi on 20th October,2008. On the basis of documents found from the residential premises of Shri BK Dhingra, which were belonging to the assessee company, proceedings under Section 153C read with S.153A were initiated in the case of the assessee vide notice dated 10th September,2010. The Assessing Officer completed the assessment vide order dated 31st December,2010 at the total income of Rs.32,91,002/- in which the following additions were made:

Unexplained purchases under Section 68	Rs.28,80,575/-
Expenses disallowed	Rs. 4,01,338/-

Both the above additions were deleted by the Ld.CIT(A). Therefore, the Revenue is in appeal against the deletion of the addition by the Ld.CIT(A). The assessee is in appeal wherein the validity of the initiation of proceedings under Section 153C on various grounds have been challenged. However, at the time of hearing before us, the Ld.Counsel for the assessee first referred and argued ground no.5 of the assessee's appeal. Therefore, we have taken up ground no.5 of the assessee's appeal first for hearing and adjudication. It was stated by the

Ld.Counsel for the assessee that there was amalgamation of the assessee company with M/s Sainath Associates Pvt.Ltd., the Hon'ble Jurisdictional High Court sanctioned the amalgamation vide order dt. 25.5.2010. That after the order of the amalgamation by the Hon'ble Jurisdictional High Court the assessee company namely M/s Image Credit and Portfolio Pvt.Ltd. (supra) ceased to exist. That the Assessing Officer issued notice under Section 153 C on 14.9.2010 which was after the order of Hon'ble Jurisdictional High Court sanctioning the scheme of amalgamation. Thus the notice issued under Section 153C in the name of non existing company is a nullity and consequently the assessment framed on the basis of notice issued under Section 153C is also a nullity. In support of this contention he relied upon the decision of the Delhi "F" Bench of the ITAT in the case of PD Associates Pvt.Ltd. in ITA nos. 5811/Del/2013 to 5816/Del/2013, and the decision of Hon'ble Jurisdictional High Court in the case of Spice Entertainment Ltd. in ITA nos. 475 and 476 of 2011.

5. The Ld.D.R. on the other hand relied upon the order of the authorities below and stated that in the assessment order the Assessing Officer has duly mentioned that M/s Image Credit and Portfolio Pvt.Ltd. has amalgamated with M/s Sainath Associates Pvt.Ltd. Therefore in affect the assessment order is not passed on a non-existent entity but on M/s Sainath Associates P.Ltd. which is very much in existence. He also pointed out that the assessee intimated the Assessing Officer about the amalgamation of the assessee company vide letter dt. 19th November,2010. Notice under Section 153C was already issued before that date i.e. on 14th September,2010. He, therefore, submitted that the assessment order is validly passed and the same should be upheld.

6. We have carefully considered the arguments of both sides, perused the material placed before us. Admittedly the assessment for the year

under consideration has been completed on the basis of notice under Section 153C dt. 14.9.2010 which reads as under.

Dt. 10.09.2010

To: M/s Image Credit & Portfolio Pvt.Ltd.
Delhi

In pursuance of the provisions of section 153C of the Income Tax Act, 1961, inserted by the Finance Act, 2003 with effect from 1st June, 2003, you are required to furnish return of income in respect of AY 2003-04 in respect of which you are assessable as company.

The return shall be in 'Form' as prescribed in sub-rule(1) 12 of Income Tax Rules, 1962 and shall be delivered in this office within 15 days of service of this notice. The prescribed form should be duly verified and signed in accordance with the provisions of s.140 of the Income Tax Act, 1961.

*Sd/- (Gautam Deb)
ACIT, CC 17, N.Delhi"*

6.1. From the above it is evident that the notice has been issued in the name of M/s Image Credit & Portfolio Ltd. That the Hon'ble Delhi High Court, which is the Jurisdictional High Court, has passed the order dt. 25th day of May, 2010 under Section 394 of the Companies Act, 1956 approving the amalgamation of the assessee company with M/s Sainath Associates Pvt.Ltd. The relevant finding of their Lordships held as under.

"THIS COURT DOETH HEREBY SANCTION THE SCHME OF AMALGAMATION set forth in Schedule I annexed hereto and Doth hereby declare the same to be binding on all the shareholders & creditors of the Transferor and Transferee Companies and all concerned and doth approve the said Scheme of Amalgamation with effect from the appointed date i.e. 01.04.2008."

Thus their Lordships have approved the amalgamation w.e.f. appointed date i.e. 1st April, 2008. The order approving amalgamation was passed on 25th day of May, 2010 by which M/s Image Credit and Portfolio P.Ltd. which is a transferor company merged and amalgamated with M/s Sainath Associates Pvt.Ltd. which is a transferee company. Thus M/s Image Credit and Portfolio Pvt.Ltd. i.e. the assessee ceased to exist after 25th day of May, 2010. The notice under Section 153C in the name of

M/s Image Credit and Portfolio Pvt.Ltd. was issued on 10th September,2010 i.e. after the date when M/s Image Credit and Portfolio Pvt.Ltd. ceased to exist. The Hon'ble Jurisdictional High Court has considered the validity of notice issued under Section 143(2) of the Act after amalgamation in the case of M/s Spice Entertainment Ltd. vide ITA; nos. 475 and 576/2000. Their Lordships held as under.

“ 11. After the sanction of the scheme on 11th April,2004, the Spice ceases to exist w.e.f. 1st July,2003. Even if Spice had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said 'dead person'. When notice under Section 143(2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the Assessing Officer. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non existing entity on that date. In such proceedings and assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppels against law.”

6.2. The ratio of the above decision would be squarely applicable to the case of the assessee because the facts are identical. In the above mentioned case notice under Section 143(2) of the Act was sent to the company which was not in existence on the date of the issue of notice. Similarly in the case of the assessee notice under Section 153C was issued in the name of M/s Image Credit and Portfolio Pvt.Ltd. on 10th September,2010 when this company was not in existence. Therefore, the ratio of the decision of Hon'ble Jurisdictional High Court in the case of M/s Spice Entertainment Ltd. (supra) would be squarely applicable to the issue of notice under Section 153C in the case of the assessee. Whether the assessee intimated about the amalgamation before the issue of notice under Section 153C or not would not be relevant for deciding the issue of validity of the notice under Section 153C of the Act. Whether

the assessee intimated or not the fact remains that M/s Images Credit and Portfolio (P) Ltd. ceased to exist after the approval of amalgamation by the Hon'ble Jurisdictional High Court i.e. 25th day of May,2010. Whether it is in the knowledge of the Revenue or not any notice issued in the name of a non existent person is a nullity. Therefore, we hold that the issue of notice under Section 153C of the Act on 10th September,2010 was void. It may be pointed out that on 19th November,2010 the assessee intimated to the Assessing Officer with regard to amalgamation of the assessee company with M/s Sainath Associates Pvt.Ltd. and also furnished a copy of the order of the Hon'ble Jurisdictional High Court. At that time the Assessing Officer could have issued the notice under Section 153C in the name of the transferor company i.e. M/s Sainath Associates Pvt.Ltd. However, the Assessing Officer instead of issuing notice in the name of transferor company chose to complete the assessment in the name of the assessee by simply mentioning in the Cause Title of the assessment order the fact of amalgamation. Considering the totality of the above facts and respectfully following the decision of Hon'ble Jurisdictional High Court in the case of M/s Spice Entertainment Ltd. we hold that the issue of notice under Section 153C in the name of M/s Image Credit and Portfolio Pvt.Ltd. on 10th September,2010 is void. Accordingly the same is quashed. Once the notice issued under Section 153C has been quashed the assessment completed in pursuance to such notice also cannot survive and the same is also quashed.

6.3. The facts in the AY 2004-05 to 2008-09 are identical. Therefore, the issue of notice under Section 153C for the AY 2004-05 to 2008-09 and the consequential assessment orders which were passed in pursuance to such notice are also cancelled.

6.4. Since we have already quashed the assessment order, the grounds of appeal raised by the Revenue in its appeals against the deletion of addition by the Ld.CIT(A) do not survive.

7. In the result, assessee's appeals are allowed and Revenue's appeals are dismissed.

Decision pronounced in the open Court on 19th December, 2014.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

Dated : 19.12.2014

*Manga

Copy forwarded to: -

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

Assistant Registrar