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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 11th February, 2015

\+ **ITA 19/2014**
\+ **ITA 21/2014**
\+ **ITA 22/2014**
\+ **ITA 23/2014**
\+ **ITA 24/2014**

COMMISSIONER OF INCOME TAX –II ..... Appellant
Through: Mr.Kamal Sawhney, Sr.Standing counsel with Mr.Sanjay Kumar, Jr.Standing counsel.

versus

M/S MICRON STEELS PVT. LTD. ..... Respondent
Through: Mr.Salil Kapoor and Mr.Vikas Jain, Advs.

\+ **ITA 20/2014**

COMMISSIONER OF INCOME TAX –II ..... Appellant
Through: Mr.Kamal Sawhney, Sr.Standing counsel with Mr.Sanjay Kumar, Jr.Standing counsel.

versus

M/S STEELS PVT. LTD. ..... Respondent
Through: Mr.Salil Kapoor and Mr.Vikas Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Revenue in these appeals claims to be aggrieved by the order of Income Tax Appellate Tribunal (ITAT) dated 19.02.2013. The ITAT had

affirmed the order of CIT(Appeals) who had set aside the block assessment of M/s Micron Steels Pvt. Ltd. (the original assessee which subsequently amalgamated with M/s Lakhanpal Infrastructure Pvt. Ltd. w.e.f. 01.02.2008 by virtue of an order dated 19.02.2010). The assessment years in question are 2003-04 to 2008-09.

2. The grounds on which the CIT(Appeals) and later the ITAT set aside the assessment was that the assessee had amalgamated with M/s Lakhanpal Infrastructure Pvt. Ltd. and neither was it assessed in the relative periods and that the amalgamation of the original assessee corporate had rendered the assessment framed against it as void.

3. The facts relevant for deciding this appeal are that on 20.10.2008, a search and seizure action was conducted in the cases of B.K.Dhingra, Smt. Poonam Dhingra, M/s Madhusudan Buildcon Pvt. Ltd. and others connected. Based upon the said search, and the materials secured during that proceedings, block assessments were finalized in respect of those assessees. The Assessing Officer (AO) was of the opinion that during the course of the search, materials were seized which belonged to the respondents/assessees and accordingly issued notice to M/s Micron Steels Pvt. Ltd. on 06.07.2010. By that time, M/s Micron Steels Pvt. Ltd. – as noticed at the outset in this judgment – had been amalgamated with M/s Lakhanpal Infrastructure Pvt. Ltd. The assessment was finalized on 31.12.2010 by the AO. In the course of assessment, the various additions were made. This was the subject matter of appeal to the CIT(A). It was urged in the appeal that on account of amalgamation and by operation of Section 170 of the Income Tax Act, the income tax authorities were under a duty, upon receipt of information, to initiate complete proceedings against the transferee company which they had

not done. This plea was accepted by the CIT(Appeals), who, *inter alia*, noted that on 19.10.2010 since the AO changed, on account of an administrative order, an intimation was received by the AO on 18.11.2010 stating that M/s Micron Steels Pvt. Ltd. no longer existed on account of the Amalgamation Order dated 19.02.2010. The CIT(Appeals), guided by various previous decisions of this Court, formed the opinion that the contentions of the respondent/assessee was substantial and that the assessment orders as framed, were unsustainable. He, accordingly, set aside the assessment order.

4. The Revenue's appeal was rejected. The ITAT relied upon several judgements including one of the Division Bench of this Court in *Spice Entertainment Ltd. vs.Commissioner of Servicer Tax* (in ITA No. 475/2011); the ITAT held as follows:

> *8. We have carefully considered the submission in this regard and perused the records. We fully concur with the finding of the Ld. Commissioner of Income Tax (A) that a company incorporated under the Indian Companies Act is a juristic person. It takes its birth and gets life with incorporation and it dies with the dissolution as per the provision of the Companies Act. On amalgamation, the company ceases to exist in the eyes of the law. Thus, assessment upon a dissolved company is impermissible as there is no provision in Income Tax Act to make an assessment thereupon. Ld. Commissioner of Income Tax (A) in our view, has therefore, rightly held that assessment on a company which has been dissolved by amalgamation u/s. 391 and 394 of the Companies Act, 1956 is invalid. Admittedly, Assessee Company in the present case stood dissolved on 19.9.2010 on amalgamation with M/s Lakhanpal. Infrastructure Pvt. Ltd. and the assessment order in the present case was*

> *framed on 31.12.2010. Hence, we uphold the order of the Ld. Commissioner of Income Tax (A).*
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> *9. In view of the above finding on the maintainability of the assessment order itself, which has been held to be a nullity, the issue raised in the other grounds of appeals preferred by the revenue and cross objections· raised by the assessee have become infructuous and they don't need adjudication.*

5. It is urged on behalf of the revenue that the assessment as framed, could not have been set aside. To say so, learned counsel firstly contended that the AO took note of the fact that the M/s Micron Steels Pvt. Ltd. had been amalgamated as is evident from the fact that the assessment was framed in respect of "Micron Steels", and consequently the assessee effectively participated and made its view on its own and filed its return. Learned counsel contended that the operation of Section 292(B), therefore, precluded the assessee's contention with regard to nullity of the entire proceedings.

6. This Court notices, at the outset, that the issue urged is no longer *res integra*. As stated earlier, *Spice Entertainment* (supra) is an authority for the proposition that completion of assessment in respect of a nonexistent company, due to the amalgamation order, would render assessment in the name and in respect of the original assessee company, a nullity. In *Spice Entertainment* (supra) after referring to *Saraswati Industrial Syndicate Ltd. Vs. CIT*, 186 ITR 278, this Court held as follows:

> *9. The Court referred to its earlier judgment in General Radio and Appliances Co. Ltd. Vs. M.A. Khader (1986) 60 Comp Case 1013. In view of the*

aforesaid clinching position in law, it is difficult to digest the circuitous route adopted by the Tribunal holding that the assessment was in fact in the name of amalgamated company and there was only a procedural defect.

10. Section 481 of the Companies Act provides for dissolution of the company. The Company Judge in the High Court can order dissolution of a company on the grounds stated therein. The effect of the dissolution is that the company no more survives. The dissolution puts an end to the existence of the company. It is held in M.H. Smith (Plant Hire) Ltd. Vs. D.L. Mainwaring (T/A Inshore), 1986 BCLC 342 (CA) that "once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Thus an insurance company which was subrogated to the rights of another insured company was held not to be entitled to maintain an action in the name of the company after the latter had been dissolved".

11. After the sanction of the scheme on 11th April, 2004, Spice ceases to exit 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 AO. 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 day. 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 estoppel against law.*

7. As a result, it is held that the first contention urged is without substance. With respect to the applicability of Section 292B, learned counsel for the assessee further argued that since the issue is invalid, initiation of the proceedings under Section 153 C and on a company which is non-existent and has already been amalgamated with other company is nullity. Thus from each angle, Section 292 B is not applicable to the facts of the present case. In *Spice Entertainment* (supra) this Court held as follows:

> *12. Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292B of the Act. Section 292B of the Act reads as under:-*
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> > *"292B. No return of income assessment, notice, summons or other proceedings furnished or made or issue or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reasons of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceedings is in*

substance and effect in conformity with or according to the intent and purpose of this Act."

13. The Punjab & Haryana High Court stated the effect of this provision in CIT Vs. Norton Motors, 275 ITR 595 in the following manner:-

> *"A reading of the above reproduced provision makes it clear that a mistake, defect or omission in the return of income, assessment, notice, summons or other proceeding is not sufficient to invalidate an action taken by the competent authority, provided that such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the provisions of the Act. To put it differently, Section 292B can be relied upon for resisting a challenge to the notice, etc., only if there is a technical defect or omission in it. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or other proceeding taken by an authority suffers from an inherent lacuna affecting his/its jurisdiction, the same cannot be cured by having resort to Section 292B.*

14. The issue again cropped up before the Court in CIT Vs. Harjinder Kaur (2009) 222 CTR 254 (P&H). That was a case where return in question filed by the assessee was neither

signed by the assessee nor verified in terms of the mandate of Section 140 of the Act. The Court was of the opinion that such a return cannot be treated as return. Even a return filed by the assessee and this inherent defect could not be cured inspite of the deeming effect of Section 292B of the Act. Therefore, the return was absolutely invalid and assessment could not be made on a invalid return. In the process, the Court observed as under:-

> *"Having given our thoughtful consideration to the submission advanced by the learned Counsel for the appellant, we are of the view that the provisions of Section 292B of the 1961 Act do not authorize the AO to ignore a defect of a substantive nature and it is, therefore, that the aforesaid provision categorically records that a return would not be treated as invalid, if the same "in substance and effect is in conformity with or according to the intent and purpose of this Act". Insofar as the return under reference is concerned, in terms of Section 140 of the 1961 Act, the same cannot be treated to be even a return filed by the respondent assessee, as the same does not even bear her signatures and had not even been verified by her. In the aforesaid view of the matter, it is not possible for us to accept that the return allegedly filed by the assessee was in substance and effect in conformity with or according to the intent and purpose of this Act. Thus viewed, it is not possible for us to accept the contention advanced by the learned Counsel for the appellant on the basis of Section 292B of the 1961 Act. The return under reference, which had been taken into consideration by the Revenue, was an absolutely invalid return*

as it had a glaring inherent defect which could not be cured in spite of the deeming effect of Section 292B of the 1961 Act."

15. Likewise, in the case of Sri Nath Suresh Chand Ram Naresh Vs. CIT (2006) 280 ITR 396, the Allahabad High Court held that the issue of notice under Section 148 of the Income Tax Act is a condition precedent to the validity of any assessment order to be passed under section 147 of the Act and when such a notice is not issued and assessment made, such a defect cannot be treated as cured under Section 292B of the Act. The Court observed that this provision condones the invalidity which arises merely by mistake, defect or omission in a notice, if in substance and effect it is in conformity with or according to the intent and purpose of this Act. Since no valid notice was served on the assessee to reassess the income, all the consequent proceedings were null and void and it was not a case of irregularity. Therefore, Section 292B of the Act had no application.

16. When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of Section 292B of the Act are not applicable in such a case. The framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a "dead person".

8. The Court was further of the opinion that a jurisdictional defect such as nullity shakes the entire proceedings and does not render the order a mere

irregularity. For this purpose the Court has relied upon *CIT vs. Norton Motors* 275 ITR 595.

9. In view of the above, we are of the opinion that the facts of these cases do not disclose any peculiar feature warranting interference. No substantial question of law arises; the appeals are consequently dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 11, 2015
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