

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : "G", NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER**

<b>I.T.A.No. 501/DEL/2010 A.Y. 2006-07</b>	
SC Johnson Products Pvt.Ltd. (For Erstwhile Karamchand Appliances P.Ltd.) M 69, M Block Market G.K. II New Delhi 110 048  PAN: AAACL 3128 M	Vs. DCIT, Circle 7(1) New Delhi
<b>(APPELLANT)</b>	<b>(RESPONDENT)</b>

Assessee by : Sh. KM Gupta, Adv.  
And Sh. Mayur Toshiwal, C.A.  
Department by : Sh.Ramesh Chandra, CIT, D.R.  
Sh.BRR Kumar, Sr.D.R.

**ORDER**

**PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

This is an appeal filed by the assessee directed against the order of the Ld.CIT(A)-X, New Delhi dated 13.11.2009 pertaining to the Assessment Year (AY) 2006-07.

**2. Facts in brief:-** The assessee company M/s Karamchand Appliances Pvt.Ltd. (hereinafter called KAPL) amalgamated with the assessee company S.C.Johnson Products Private Ltd. (hereinafter known as SGAPPL) w.e.f. 1<sup>st</sup> June, 2005. A scheme of amalgamation was filed before the Hon'ble Delhi High Court and this was duly approved u/s 391 and 394 of the Companies Act, 1956 vide order dt. 09<sup>th</sup> October, 2006. This was duly filed before the Registrar of Companies.

**2.1.** The erstwhile company M/s KAPL filed a return of income on 30.11.2006 declaring income of Rs.2,28,62,335/-. During the course of assessment proceedings it was brought to the notice of the A.O. by the assessee vide letter dt. 15<sup>th</sup> January, 2007 that the amalgamation of KAPL with the assessee company was wef 1<sup>st</sup> June,2005. It further submitted as follows:

“in view of the above event, KAPL ceases to exist as a separate legal entity wef June 14, 2005 and succeeded by the merged entity SC Johnson Products Pvt.Ltd.” This fact was recorded by the A.O. in para 3(a) at page 1 of his order which reads as under:

*“The assessee company has been merged with SC Johnson Products Pvt.Ltd. with retrospective effect from 1<sup>st</sup> June, 2005 as per the scheme of amalgamation, duly approved by the Hon’ble High Court of Delhi vide its order dt. 9<sup>th</sup> October, 2006 and which was duly filed with Registrar of Companies, NCT, Delhi and Haryana on 22<sup>nd</sup> November, 2006 (being effective date of merger). In short in this assessment order the profit and gains of the assessee company is considered only for 02 months i.e. from 1.4.2005 to 31.5.2005.”*

The A.O. passed an order u/s 143(3) of the Act on 31.12.2008 in the name of M/s K.C.Appliances P.Ltd.

**2.2.** Though the assessee has raised a number of grounds in the appeal, we have today heard him on the issue as to whether the assessment order passed by the A.O. u/s 143(3) of the Act on 31.12.2008 in the name of M/s Karamchand Appliances Pvt.Ltd., is a valid order in the light of the fact that this company is no more in existence, consequent to its merger with M/s S.C.Johnson Products Ltd.

**3.** Heard Sh. KM Gupta along with Sh. Mayur Toshiwal, the Ld.Counsel for the assessee and Shri BRR Kumar, Ld.Sr.D.R. on behalf of the Revenue.

**4.** The assessee relied on two judgements of the Jurisdictional High Court and submitted that the issue is no more res integra and that no assessment can be framed on non existing amalgamating company, i.e. judgement dt. 3<sup>rd</sup> August, 2011 in the case of Spice Entertainment Ltd. Vs. CST in ITA 475 and 476/Del/2011, and CIT vs. M/s Micron Steels Ltd. in ITA nos. 19 to 24/2014 judgement dt. 11<sup>th</sup> Feb., 2015.

**5.** Ld.CIT, D.R. Shri Ramesh Chandra on the other hand submitted that (a) the decision of Hon'ble Delhi High Court in the case of CIT vs. M/s Micron Steels Ltd. (supra) is not a binding precedent for the reason the Hon'ble Delhi High Court held that no substantial question of law arises which means that the Hon'ble High Court has come to a conclusion that it does not have jurisdiction to adjudicate the appeal in terms of S.260A of the Act;

(b) Precedents value is only for issues on which questions are framed and answered by the High Court;

(c ) When no substantial question of law arises in a case, the High Court does not admit such appeals and in such circumstances the order of the High Court is not binding precedent. He relied on the case law State of Punjab & others vs. Surinder Kr. And others reported in 194 ITR 434 (SC).

(d) He referred to S.124(3) and submitted that the assessee should have objected to the jurisdiction of the AO within the time frame provided in this section and in failing to do so it is stopped from pleading lack of jurisdiction at a later stage.

He relied on the decision of the Full Bench of Hon'ble Gauhati High Court reported in 101 ITR 130 and submitted that S.124(3) does not deal with only territorial jurisdiction.

(e) On the judgement in the case of Spice Entertainment P.Ltd. (supra), he submitted that the issue dealt by the High Court is whether the ITAT was right in holding that the AO committed a procedural error or not and whether S.292B is applicable. He vehemently contended that S.124(3) has not been brought to the notice of the High Court and under such circumstances this judgement of the Jurisdictional High Court is not a binding precedent. In reply the Ld.Counsel for the assessee submitted that it was pleaded before the AO that M/s KAPL is a non existing entity. He further relied on the following decisions of the Tribunal and submitted that all the contentions raised by the assessee were answered by the Tribunal in these decision.

(i) ITA 447/Del/2004 “D” Bench HCL Corporation Ltd. (for and on behalf of Vama Sundari Investment P.Ltd. vs. ACIT order dt. 7.8.2014.

(ii) ITA 5874 to 5878/Del/13 and other appeals in the case of M/s Computer Engineering Services P.Ltd. vs. ACIT B Bench order dt. 29.5.2015

**6.** The Ld.CIT,DR for the Revenue joining the issue submitted that his detailed written arguments were not considered by the Bench in the case of M/s Computer Engineering Services P.Ltd. and hence that decision should not be taken as a binding precedent.

**7.** The Ld.Sr.D.R. Sri BRR Kumar, on the other hand took us through the order of the First Appellate Authority on this issue and submitted that the assessment has been framed only for a period of 2 months i.e. prior to the date on which the amalgamation took place and in such circumstances the assessment cannot be held as bad in law.

**8.** Rival contentions heard. On a careful consideration of the facts and circumstances of the case, on perusal of material on record, orders of the authorities below, case laws cited, we hold as follows.

9. The facts of the case are clear. The assessment in this case has been framed on a non existing assessee. The Hon'ble Delhi High Court in the case of Spice Entertainment P.Ltd. (supra) has dealt with an identical issue and held as follows.

*“In this backdrop, the question that arises for consideration is as to whether the assessment in the name of a company which had been amalgamated and had been dissolved with the said amalgamating company will be null and void or whether framing of assessment in the name of such a company is a mere procedural defect which can be cured. The appeals were, thus, finally admitted and heard on the following questions of law.*

- (i) *Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the action of the AO in framing assessment in the name of Spice Corp.Ltd. after the said entity stood dissolved consequent upon its amalgamation with MCorp Private Ltd. wef 1.7.2003, was a mere procedural defect?*
- (ii) *Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that in view of the provisions of s.292B of the Act, the assessment, having in substance and effect, been framed on the amalgamated company which could not be regarded as null and void?*

*We may, however, point out that the returns were filed by M/s Spice on the day when it was in existence it would be permissible to carry out the assessment on the basis of those returns after taking the proceedings afresh from the stage of issuance of notice u/s 143(2) of the Act. In these circumstances, it would be incumbent upon the AO to first substitute the name of the appellant in place of M/s Spice and then issue notice to the appellant. However, such a course of action can be taken by the AO only if it is still permissible as per law and has not become time barred.”*

Further it was held that S.292B of the Act has no application.

**9.1.** Similar is the judgement of Hon'ble Jurisdictional High Court in the case of M/s Micron Steels Ltd. (supra) wherein the decision in the case of Spice Entertainment P.Ltd. (supra) was followed. We are unable to accept the contentions of the Ld.CIT,D.R. that these judgements of the Jurisdictional High Court are not binding and that they have no precedence value.

**9.2.** As various arguments raised by the Ld.CIT,D.R. have been dealt in by the Delhi "B" Bench of the Tribunal in the case of M/s Computer Engineering Services India P.Ltd. in ITA nos. 5874 to 5878/Del/2013 vide order dt. 29.5.2015, we do not deem it necessary to once again deal with the same. Suffice to say that such arguments by the Ld.CIT, D.R. cannot be countenanced.

**9.3.** The Delhi "D" Bench of the Tribunal in the case of HCL Corpn. Ltd. Vs. ACIT (in ITA no.447/Del/2004) (supra) has also dealt with the arguments on S.124(3) of the Act at para 6.2 of its order. Hence this aspect is also devoid of merit.

Also Delhi B Bench of the Tribunal in ITA nos. 5874 to 5875/Del/13 in the case of M/s Computer Engineering Services India P.Ltd. has dealt with this issue on S.124(3) at para 34 of its order dt. 29<sup>th</sup> May, 2015

Consistent with the view taken therein we dismiss all these arguments of the Ld.CIT, D.R.

**9.4.** As the assessment order is made on a non existing person, we respectfully follow the decision of the Jurisdictional High Court in the case of Spice Entertainment Ltd. (supra) and quash the assessment order as confirmed by the First Appellate Authority. In the result assessee's appeal is allowed.

10. In the result the appeal of the Assessee is allowed.

Order pronounced in the Open Court on 17<sup>th</sup> June, 2015.

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[J. SUDHAKAR REDDY]**  
**ACCOUNTANT MEMBER**

Dt. the 17<sup>th</sup> June, 2015

- **Manga**

**Copy forwarded to: -**

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

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By Order,

Assistant Registrar, ITAT, Delhi Benches