



\$~8-13

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

+ ITA 190, 191, 192, 193, 194 & 197/2014

THE COMMISSIONER OF INCOME TAX-II Appellant
 Through: Mr. Kamal Sawhney, Sr. Standing
 Counsel with Mr. Raghvendra, Jr. Standing
 Counsel, Mr. Mukul Mathur and Mr. Shikhar
 Garg, Advocates.

versus

N.J. STEELS PVT. LTD Respondent
 Through: None.

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

ORDER
18.05.2015

%

The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal ("ITAT") dated 19.02.2013 - made for AYs 2003-04 – 2008-09. It is contended that the ITAT fall into error in holding in the circumstances of the case that the assessments made were nullity in law.

The brief facts are that search and seizure operations were conducted under Section 132 in the case of three individuals Mr. B.K. Dhingra, Smt. Poonam and M/s Madhusudan Buildings Pvt. Ltd. on 20.10.2008. Apparently, the AO formed an opinion that certain materials found in the course of the search proceedings



belonged to other parties and issued notice *inter alia* to one N.J. Steels Pvt. Ltd. During the pendency of those proceedings, the N.J. Steels. Pvt. Ltd. were amalgamated with M/s Life Time Buildcon Pvt. Ltd. in terms of an order of this Court under the Companies Act on 19.02.2010. This fact was brought to the notice of the AO who nevertheless without issuing fresh notice to the transferee company, i.e., Lifetime Buildcon Pvt. Ltd., proceeded to frame assessments in respect of the erstwhile assessee, i.e., N.J. Steels Pvt. Ltd. The appeal to the CIT (A) succeeded. The Revenue felt aggrieved approached the ITAT which rejected its appeal reasoning 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 provisions 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 28.09.2010 on amalgamation with MJs Life Time Buildcom P 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).”



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 order grounds of appeals preferred by the revenues and cross objection raised by the assessee have become infructuous and they do not need adjudication."*

We noticed at the outset that the facts of this case are closely similar if not entirely identical with the decision of this Court in *Spice Entertainment Limited vs CIT*, (ITA 475/2011): reported in 2012 (280) ELT 43 followed by this Court in *CIT, (C)-II v. Micra India Pvt. Ltd.* (ITA 441/2013), decided on 22.01.2015. Given that there is no dispute that the AO was informed about the amalgamation during the pendency of the assessment itself, framing of assessment was in the circumstances unsupportable in law and a nullity.

We find no reason to interfere with the order of the ITAT.

The appeals are accordingly dismissed as unmerited.


S. RAVINDRA BHAT, J


R.K. GAUBA, J

MAY 18, 2015

/vikas/