



\$~  
\*  
7.  
+

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

**W.P. (C) 2712/2016**

**BDR BUILDERS & DEVELOPERS PVT. LTD.** .....Petitioner  
Through: Mr. Salil Aggarwal, Ms. Madhu  
Aggarwal and Mr. Uma Shankar, Advocates.

versus

**ASSISTANT COMMISSIONER OF INCOME TAX**

..... Respondent  
Through: Mr. Ashok K. Manchanda, Senior  
Standing Counsel.

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**  
**26.07.2017**

%

**Dr. S. Muralidhar, J.:**

1. This writ petition by BDR Builders and Developers Private Limited ('BBDPL' or 'Petitioner') challenges a notice dated 3<sup>rd</sup> April, 2012 issued under Section 148 of the Income Tax Act, 1961 ('Act'). A challenge is also laid to a letter dated 14<sup>th</sup> March, 2016 whereby the proceedings initiated against the Petitioner under Section 148 of the Act by the notice dated 3<sup>rd</sup> April 2012 were sought to be revived.

2. The facts leading to the filing of the present petition are that the Petitioner is engaged in the business of real estate. Another company, namely Verma Buildtech & Promoters Private Limited ('VBPPL') also engaged in the same



business of real estate, and which later amalgamated with the Petitioner, filed its return of income for Assessment Year ('AY') 2008-09 on 19<sup>th</sup> August, 2008. This return was processed under Section 143(1) of the Act.

3. VBPPPL stood amalgamated with the Petitioner with effect from 1<sup>st</sup> April, 2012. The scheme of amalgamation was approved by the High Court by an order dated 20<sup>th</sup> February, 2013 in Company Petition No. 287 of 2012. In the said petition were the Transferor companies and included VBPPPL. The transferee company was the Petitioner herein i.e. BBDPL. Paragraph 16 of the said order reads as under:

“16. An affidavit dated 6<sup>th</sup> February 2013 has been filed on behalf of the Petitioner companies stating that any notices to the Transferor companies under the Act that may be issued hereafter will be responded to by the Transferee company. With this, none of the objections raised by the RD survives.”

4. On 3<sup>rd</sup> April, 2012 the Deputy Commissioner of Income Tax, Circle-16(1) (hereafter Assessing Officer - 'AO') issued a notice under Section 148 of the Act to VBPPPL for the AY 2008-09 stating that he had reason to believe that income chargeable to tax for the said AY had escaped assessment.

5. On 26<sup>th</sup> April, 2012, VBPPPL wrote to the AO stating that the return originally filed by it on 19<sup>th</sup> August, 2008 should be treated as a return in response to the notice under Section 148 of the Act. Thereupon, at the request of VBPPPL, on 6<sup>th</sup> June, 2012, the reasons for reopening of the assessment were furnished to it. The reasons read as under:



“Certain investigations were carried out by the Directorate of investigation, New Delhi in respect of the bogus accommodation entries provided by Shri Tarun Goyal. The name of the assessee i.e. M/s Verma Buildtech & Promoters Pvt. Ltd. as one of the beneficiaries of these alleged bogus transactions as per information given by the DIT (Inv), New Delhi after making the necessary enquiries. It has been revealed that entry of Rs.1,50,00,000/- has been received by the assessee during the Financial Year 2007-08 relevant to Assessment Year 2008-09.

In view of the above facts, I have therefore, reason to believe that by reason of omission or failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment and by claiming wrong deductions, income chargeable to tax has escaped assessment.”

6. The Petitioner filed its objections to the re-opening on 26<sup>th</sup> December, 2013.
7. A search and seizure operation was undertaken by the Department under Section 132 (1) of the Act in respect of VBPPPL. Significantly, the authorisation for the search was issued in the name of VBPPPL.
8. The objections to the reopening of the assessment for the AY in consideration were rejected by the AO on 6<sup>th</sup> January, 2014. In view of the search action Section 132 (1) of the Act, the AO on his own, on 6<sup>th</sup> March, 2014 held the assessment proceedings under Section 147 of the Act to have abated.
9. More than a year later, on 22<sup>nd</sup> April, 2015, the AO issued a notice under



Section 153A of the Act again in the name of VBPPPL for AY 2008-09.

10. By a letter dated 5<sup>th</sup> May, 2015 an objection was raised to said notice *inter alia* pointing out that VBPPPL had already amalgamated with the Petitioner herein, i.e. BDPPL, by the order dated 20<sup>th</sup> February, 2013 of the High Court with effect from 1<sup>st</sup> April, 2012. Accordingly, it was contended that the warrant issued and the panchnama drawn up in the name of VBPPPL was *non est* since the entity in whose name it was issued was non-existent. Secondly, it was pointed out that the search and seizure operation had been carried out in the office premises of Mr. Rajesh Gupta, one of the Directors of the Petitioners at his premises at 21, Third Floor, Lajpat Nagar, New Delhi. It is pointed out that the Petitioner was not associated with the premises. Mr. Gupta was not connected with VBPPPL at any point in time. Secondly, not a single document belonging to VBPPPL was found by the search party in the premises. Without prejudices to this contention it was stated that the return already filed by VBPPPL for the AY in question on 19<sup>th</sup> August, 2008 should be treated as the return filed in response to the notice under Section 153A of the Act.

11. On 16<sup>th</sup> November, 2015 another notice under Section 153A was issued this time to the Petitioner and it was indicated in “successor in interest of erstwhile company M/s. Verma Buildtech Promoters Pvt. Ltd.” The said notice acknowledged that VBPPPL had merged with the Petitioner with effect from 1<sup>st</sup> April, 2012 and, therefore, the Petitioner was responsible to represent VBPPPL for the period prior to its amalgamation. Therefore, the Petitioner was asked to furnish a return for VBPPPL for the AY in question in



the prescribed form.

12. The Petitioner replied on 1<sup>st</sup> December, 2015 pointing out that on the date of issuance of the authorisation for search, VBPPPL ceased to exist. It was stated that on 16<sup>th</sup> October 2013, the Petitioner had surrendered the PAN of VBPPPL requesting for its cancellation. It was further stated that no incriminating material was found during the course of search of VBPPPL. Accordingly, the proceedings were asked to be dropped.

13. On 29<sup>th</sup> January 2016, the Joint Commissioner of Income Tax, Central Range-4 wrote to the Assistant Commissioner of Income Tax granting approval for dropping of the proceedings under Section 153A in the case of VBPPPL. Notwithstanding the above, on 1<sup>st</sup> February, 2016 the AO issued a notice under Section 142 (1) of the Act to “The Principal Officer M/s. Verma Buildtech Promoters Private Limited (amalgamated with M/s. BDR Builders and Developers Ltd.)” seeking the production of the accounts and other documents pertaining to the AY in question. On 11<sup>th</sup> February, 2016, the Petitioner wrote to the AO pointing out that, since there was no pending income tax proceeding in the case of VBPPPL, the said notice should stand withdrawn.

14. Notwithstanding the above, on 23<sup>rd</sup> February, 2016 the AO again issued a notice under Section 143(2) of the Act along with a questionnaire allegedly in connection with the assessment proceedings under Section 153A/143(3) of the Act concerning VBPPPL for AY 2008-09. By a letter dated 29<sup>th</sup> February, 2016 the Petitioner protested against the said



notice. On 3<sup>rd</sup> March, 2016 the notice dated 23<sup>rd</sup> February, 2016 and the questionnaire were withdrawn by the AO admitting to having inadvertently issued them.

15. On 14<sup>th</sup> March, 2016, the AO issued the impugned notice under Section 148 of the Act on the ground that with the dropping of the proceedings under Section 153A of the Act, the proceedings under Section 148 of the Act, which had abated due to the initiation of the proceedings under Section 153A of the Act, had revived. It was stated that the limitation for completing those proceedings stood extended up to 31<sup>st</sup> March, 2015. It was stated therein that, in view of the above facts, the Petitioner should comply with the terms of the notices already issued under Section 142(1) of the Act.

16. It was in the above circumstances that the Petitioner has approached this Court seeking the quashing of the notice dated 3<sup>rd</sup> April, 2012 under Section 148 of the Act and the letter dated 14<sup>th</sup> March, 2016 seeking to revive the said proceedings.

17. While directing notice to issue in this petition on 28<sup>th</sup> March 2016, this Court directed that the order framed in the reassessment proceedings would not be given effect to. In the reply filed to the petition, the stand taken by the Revenue is that the original notice issued on 3<sup>rd</sup> April, 2012 was issued within four years from the end of the relevant AY and, therefore, was valid. In the proceedings in the Company Court the Regional Director ('RD') had filed an affidavit on 4<sup>th</sup> December, 2012 objecting to raising capital at a huge



premium when the net worth of the company was insignificant. Reference was also drawn to the portion of the order dated 20<sup>th</sup> February, 2013 of the High Court where one of the conditions on which the amalgamation was approved was that any notice to the transferor company (which included VBPL) would have to be responded to by the transferee company i.e. the Petitioner. It is further pointed out that at the time the notice under Section 148 of the Act was issued, the Revenue was not made aware of the process of amalgamation. Even when the subsequent notices were issued, and even when the search was carried out, the Revenue was not informed of the amalgamation of VBPL with the Petitioner. It is accordingly pointed out that when the proceedings under Section 153A of the Act were dropped, the proceedings under Section 148 of the Act stood revived.

18. This Court has heard the submissions of Mr. Salil Aggarwal, learned counsel for the Petitioner and Mr. Ashok Manchanda, learned Senior Standing Counsel for the Department.

19. At the outset it requires to be noted that the effect of the order passed by this Court on 20<sup>th</sup> February, 2013 in Company Petition No. 287 of 2012 was that the VBPL (which was one of the transferor companies) amalgamated with the Petitioner with effect from 1<sup>st</sup> April, 2012. Therefore, by operation of law, VBPL ceased to exist with effect from 1<sup>st</sup> April, 2012. The fact that the order of the High Court may have been passed only on 20<sup>th</sup> February, 2013, and that the Department became aware of that fact even later, will not make any difference to the legal position.



20. Para 16 of the order dated 20<sup>th</sup> February 2013 records that any notices to the transferor company (which included VBPPPL) that may be issued thereafter would be responded to by the Petitioner. This is not be understood to mean that proceedings initiated against any of the transferor companies, including VBPPPL, by the Department prior to that date would be continued against the Petitioner. What it meant was that notices issued thereafter to VBPPPL after it ceased to exist would be responded to by the Petitioner. That condition has been complied with since in fact the Petitioner answered the notices issued to VBPPPL after 1<sup>st</sup> April 2012.

21. The resultant position is that on 3<sup>rd</sup> April, 2012 when the notice under Section 148 of the Act was issued to VBPPPL, it was issued to an entity which was non-existent in the eye of law. In *Spice Entertainment Ltd. v. CIT 247 CTR 500 (Del)* the assessment in the name of non-existing entity was held to be void. It was noticed in that case that despite the AO being informed that the Assessee stood amalgamated with M. Corp. Pvt. Ltd by the order of the High Court, the AO completed the assessment against the Assessee i.e. Spice Entertainment Ltd. which was non-existent as on that day.

22. In similar circumstances in *Rustagi Engineering Udyog (P) Ltd. v. Deputy Commissioner of Income Tax 382 ITR 443*, this Court held that “it is well settled that in a case of amalgamation, the amalgamated company would stand dissolved from the date on which the amalgamation/transfer would take effect.” In that case, the Court was of the view that the notices impugned therein issued to the entity after it was amalgamated were liable to



be set aside on that ground alone. The Court referred to the decision of this Court dated 3<sup>rd</sup> August, 2015 in ITA No. 471 of 2011 (*Spice Infotainment Ltd. v. CIT*) where the Court had upheld the order of the ITAT declaring the assessment against an Assessee after it was dissolved to be invalid. The Court termed it a 'jurisdictional defect'.

23. In the present case not only was the initial notice under Section 148 of the Act issued to a non-existent entity even the search under Section 153A took place against a non-existent entity. Both the warrant of authorisation and the panchnama were drawn in the name of VBPPPL on 3<sup>rd</sup> January, 2014 by which date even the order of the High Court approving the amalgamation of the VBPPPL with the Petitioner had been passed. Clearly, therefore, the entire proceedings under Section 153A of the Act were void *ab initio*. Therefore, the question of invoking Section 153 A (2) of the Act to revive the abated re-assessment proceedings under Section 147/148 of the Act did not arise.

24. It requires reiteration that the proceedings under Section 148 of the Act which commenced with the notice dated 3<sup>rd</sup> April, 2012 issued to VBPPPL were itself void *ab initio* for the simple reason that on that day VBPPPL was not in existence as a result of the order dated 20<sup>th</sup> February, 2013 of the High Court approving its amalgamation with the Petitioner with effect from 1<sup>st</sup> April, 2012. The question of revival of such proceedings at a later point in time, with there being no change to the legal position regarding VBPPPL having ceased to exist, does not arise. The mere fact that prior to 20<sup>th</sup> February, 2013 (being the date of the order approving the amalgamation)



VBPPL and/or the Petitioner may have responded to such notices, will to make a difference to the said legal position. The facts show that after 20<sup>th</sup> February 2013, the Petitioner lost no opportunity in reminding the AO at every stage that VBPPL no longer existed in the eye of law. Despite being made aware of this legal position, the AO persisted in continuing the proceedings against VBPPL.

25. A second aspect of the matter is that the reassessment proceedings under Section 147 of the Act were barred by limitation since limitation for framing the assessment under Section 143(3) read with Section 147 of the Act expired on 31<sup>st</sup> March, 2014. On this ground also, the question of revival of those proceedings by the impugned letter dated 14<sup>th</sup> March, 2016 was bad in law.

26. For all of the aforementioned reasons, this Court quashes the notice dated 3<sup>rd</sup> April, 2012 and the letter 14<sup>th</sup> March, 2016 issued by the AO under Section 148 of the Act seeking to reopen the assessment of the Petitioner for the AY in question.

27. The writ petition is allowed in the above terms but in the circumstances with no order as to costs.

**S.MURALIDHAR, J**

**PRATHIBA M. SINGH, J**

**JULY 26, 2017**

dn

*W.P. (C) 2712/2016*

*Page 10 of 10*