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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 582/2015

PR. COMMISSIONER OF INCOME TAX
(CENTRAL-II)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Advocate.

versus

IMAGES CREDIT AND PORTFOLIO PVT. LTD. Respondent
Through: None.

WITH

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ITA 584/2015

PR. COMMISSIONER OF INCOME TAX
(CENTRAL-II)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Advocate.

versus

IMAGES CREDIT AND PORTFOLIO PVT. LTD. Respondent
Through: None.

WITH

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ITA 431/2015

PR. COMMISSIONER OF INCOME TAX
(CENTRAL-II)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing



counsel with Ms. Lakshmi Gurung, Advocate.

versus

IMAGES CREDIT AND PORTFOLIO PVT. LTD. Respondent
Through: None.

WITH

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ITA 533/2015

PR. COMMISSIONER OF INCOME TAX
(CENTRAL-II)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Advocate.

versus

IMAGES CREDIT AND PORTFOLIO PVT. LTD. Respondent
Through: None.

WITH

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ITA 432/2015

PR. COMMISSIONER OF INCOME TAX
(CENTRAL-II)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Advocate.

versus

IMAGES CREDIT AND PORTFOLIO PVT. LTD. Respondent
Through: None.

AND

ITA Nos. 582, 584, 431, 533, 432 & 433 of 2015

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ITA 433/2015

**PR. COMMISSIONER OF INCOME TAX
(CENTRAL-II)**

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Advocate.

versus

IMAGES CREDIT AND PORTFOLIO PVT. LTD. Respondent
Through: None.

CORAM:

**HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU**

ORDER
19.08.2015

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1. In all these appeals under Section 260A of the Income Tax Act, 1961 ('Act') by the Revenue, the short question that arises for consideration concerns the very legality of the initiation of proceedings against the Respondent Images Credit and Portfolio Private Limited under Section 153C of the Act.

2. The ITAT has in the impugned orders upheld the contention of the Assessee and held that a notice was issued under Section 153C of the Act on a date when the noticee has ceased to exist in the eyes of law and, therefore,



the entire proceedings deserve to be quashed.

3. There was a search and seizure action under Section 132 of the Act in the cases of B.K. Dhingra, Poonam Dhingra and Madhusudan Buildcon Pvt. Ltd., New Delhi on 20th October 2008. Certain documents were purportedly recovered from the residential premises of B.K. Dhingra which were said to belong to the Respondent company. Notice was issued under Section 153A to the said company on 10th September 2010. However prior thereto on 25th May 2010 this Court passed an order under Section 394 of the Companies Act, 1956 approving the amalgamation of the Respondent company with Sainath Associates Pvt. Ltd. ('SAPL'). The amalgamation was to become effective from the 'appointed date i.e. 1st April 2008'.

4. Consequently, on the day the notice was issued to it under Section 153C of the Act i.e. 10th September 2010, the Respondent company had ceased to exist.

5. In the impugned order, the ITAT referred to an earlier decision dated 3rd August 2011 of this Court in *Spice Entertainment Ltd. v. CIT* (ITA No. 475/2000) where in similar circumstances, it was held that the defect of passing an assessment order in respect of an entity that had ceased to exist



on the date of such order, could not be treated as a mere procedural defect. Learned counsel for the Revenue referred to the decision of the CIT (A) dated 16th July 2013 where it was noticed that during the course of the assessment proceedings the authorised signatory of the Respondent by a letter dated 25th September 2010, using the letterhead of the Respondent, sought copies of documents without making any reference to the amalgamation of the Respondent with SAPL. Further the same authorised signatory wrote another letter on 13th October 2010 again using the letterhead of the Respondent to the AO. Again there was no reference to the amalgamation. It was noticed by the CIT (A) that it was only on 19th November 2010 that the Respondent referred to its merger with SAPL enclosing a copy of the order of the High Court. In the assessment order, the Assessing Officer ('AO') referred to the Respondent as having amalgamated with SAPL. On the basis of the above facts, learned counsel urged that the decision of this Court in *Spice Entertainment Ltd.* (*supra*) would have no application in the present case.

6. The Court finds that *de hors* the decision in *Spice Entertainment Ltd.* (*supra*) the undisputed fact is that on the date on which the notice was issued to the Respondent under Section 153C of the Act i.e. 10th September 2010 it



was an entity that has ceased to exist in the eyes of law. The mere use of the noticee's letterhead to address correspondence to the AO cannot tantamount to reviving an entity which has already ceased to exist. Further the mere fact that in the assessment order the AO has said that the Respondent had amalgamated with SAPL could not cure the fundamental defect in the very proceedings initiated under Section 153C of the Act i.e. a notice being issued to an entity which does not exist in the eyes of law.

7. In that view of the matter, the Court is satisfied that the ITAT has committed no legal error in coming to the conclusion that the entire proceedings initiated under Section 153C of the Act stood vitiated and deserves to be quashed. No substantial question of law arises for determination.

8. The appeals are dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

AUGUST 19, 2015/dn