

2HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 13.10.2023

Pronounced on: 03.11.2023

ITA No.22/2014

M/s Prang Finance & Investment Company Pvt. Ltd. Jammu
Through its Director Bharat Mehta Age 53 years
C/o Ashwani & Associates, Chartered Accountants,
103 Pratap Bhawan, Bahadurshah
Zafar Marg, New Delhi Appellant(s)

Through:- Mr. K.S.Johal, Sr. Advocate with
Mr. Supreet Johal, Advocate
Mr. Inderjeet Gupta, Advocate

V/s

Income Tax Officer,
Ward No.2(2), Aayakar Bhavan, Panama Chowk,
Rail Head Complex, Jammu Respondent(s)

Through:- Ms. Aruna Thakur, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

JUDGMENT

SANJEEV KUMAR J.

1. This appeal under Section 260A of the Income Tax Act, 1961 [“the Act of 1961”] is directed against order dated 30.01.2014 passed by the Income Tax Appellate Tribunal, Amritsar Bench [“the Tribunal”] in ITA No.356(ASR)/2013 (Assessment year 2004-05). Vide order dated 03.01.2015 instant appeal along with ITA No.21/2014 was admitted on the following substantial question of law:-

“Whether on the facts and circumstances of the case, the ITAT erred in law in not appreciating that the name of the

appellant company had been struck off from the Register of the Companies by the Registrar and the aforesaid company was dissolved under provisions of Section 560 of the Companies Act, 1956, prior to the date of passing of the assessment order?

2. The aforesaid substantial question of law has arisen in the background of following factual matrix:

The appellant-Company filed a Nil return of income for the assessment year 2004-05 with the Income Tax Officer Ward No.2 (2), Jammu. The Return of Income also contained a note stating therein that the appellant-Company had filed an application on 26.03.2004 before the Registrar of Companies under Section 560 of the Companies Act, 1956 [“the Companies Act”] for striking off the name of the Company from the Register of the companies under Simplified Exit Scheme. The assessment was completed under Section 143(3) of the Income Tax Act, 1961 [“the Income Tax Act”] vide order of the Assessing Authority dated 21.12.2006. The Assessing Authority made an addition of Rs.1,00,30,000/- being the amount of unsecured loans received by the Company during the earlier years and was credited to the Capital Reserve during the previous year. Feeling aggrieved, the appellant-Company filed an appeal before the Commissioner of Income Tax (Appeals), Jammu (headquarters Amritsar) against the order of assessment. The appeal was dismissed by the Ist Appellate Authority vide its order dated 05.02.2008. Second appeal was preferred by the appellant-Company before the Tribunal. The Tribunal vide its order

dated 13.08.2010 allowed the appeal and remanded the case back to Commissioner of Income Tax (Appeals) to adjudicate the case afresh after complying with necessary requirements of deposit of fee in terms of the relevant provisions of the Act.

On remand, Commissioner of Income Tax (Appeals) after providing an opportunity of being heard to the appellant passed fresh order on 01.04.2013 dismissing the appeal of the appellant-company and confirming the addition made by the assessing authority in the impugned assessment order. The Commissioner of Income Tax (Appeals) rejected the contention of the appellant-company that no assessment order could have been passed against the company which had become defunct. It is this order of the Commissioner of Income Tax (Appeals) dated 01.04.2013, which was assailed by the appellant-company before the Tribunal. The Tribunal concurred with the view of the 1st appellate authority and dismissed the appeal of the appellant-company vide order dated 30.01.2014, which is assailed before us in this appeal.

3. Since the substantial question of law on which the instant appeal was admitted has been answered by this Court in the judgment passed today in ITA No.21/2014 by holding that the order of assessment made against a non-existent entity would be nullity and would not give rise to any right or liability under such assessment order, therefore, the

judgment passed in ITA No.21/2014 shall apply to this appeal as well on all fours.

4. Accordingly, appeal is allowed and assessment dated 21.12.2006, order of the Commissioner of Income Tax (Appeals), Jammu dated 01.04.2013 and the order of the Tribunal dated 30.01.2014 are set aside.

(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge

JAMMU
03.11.2023
Vinod,PS

Whether the order is reportable: Yes/No