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

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+ **ITA 365/2013**

THE COMMISSIONER OF INCOME TAX DELHI
CENTRAL – II

..... Appellant

Through: Mr Dileep Shivpuri, Senior Standing
Counsel with Mr Sanjay Kumar, Junior Standing
Counsel.

versus

INDU SURVEYORS & LOSS ASSESSORS
PVT. LTD.

..... Respondent

Through: Mr Vikas Jain, Advocate.

WITH

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+ **ITA 366/2013**

THE COMMISSIONER OF INCOME
TAX DELHI CENTRAL – II

..... Appellant

Through: Mr Dileep Shivpuri, Senior Standing
Counsel with Mr Sanjay Kumar, Junior Standing
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versus

INDU SURVEYORS & LOSS ASSESSORS
PVT. LTD.

..... Respondent

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ITA 368/2013

THE COMMISSIONER OF INCOME TAX
DELHI CENTRAL – II

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Through: Mr Dileep Shivpuri, Senior Standing
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versus

INDU SURVEYORS & LOSS ASSESSORS
PVT. LTD.

..... Respondent

Through: Mr Vikas Jain, Advocate.

WITH

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ITA 371/2013

THE COMMISSIONER OF INCOME TAX
DELHI CENTRAL – II

..... Appellant

Through: Mr Dileep Shivpuri, Senior Standing
Counsel with Mr Sanjay Kumar, Junior Standing
Counsel.

versus

INDU SURVEYORS & LOSS ASSESSORS
PVT. LTD.

..... Respondent

Through: Mr Vikas Jain, Advocate.

AND

12.

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ITA 372/2013

THE COMMISSIONER OF INCOME TAX
DELHI CENTRAL – II

..... Appellant

Through: Mr Dileep Shivpuri, Senior Standing
Counsel with Mr Sanjay Kumar, Junior Standing
Counsel.

versus

INDU SURVEYORS & LOSS ASSESSORS
PVT. LTD.

..... Respondent

Through: Mr Vikas Jain, Advocate.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.10.2015

CM No.23641/2015 in ITA 366/2013

CM No.23645/2015 in ITA 367/2013

CM No.23647/2015 in ITA 368/2013

CM No.23643/2015 in ITA 372/2013

1. For the reasons stated in the applications, the delay of 50 days in re-filing the appeals is condoned.

2. The applications are disposed of.

ITA No.365/2013

ITA No.366/2013 & CM No.23640/2015

ITA No.367/2013 & CM No.23644/2015

ITA 368/2013 & CM No.23646/2015

ITA No.371/2013 &

ITA No.372/2013 & CM No.23642/2015

3. The question framed in the present appeals by the order dated 30th July, 2013 reads thus:

“Whether the order passed by the ITAT is perverse in view of the reasons and facts recorded in the assessment order?”

4. However, the above question was framed *ex parte* and along with a whole batch of other appeals. Having considered the Assessee's applications seeking to urge cross-objections and having heard the counsel for the parties, the Court notes that the first question urged by the Revenue itself in the memorandum of appeals requires to be framed for consideration. Accordingly, the following question is additionally framed for consideration in these appeals:

"Whether the ITAT erred in law and on facts of the case in holding that the assessment order passed in the case of Assessee is nullity as the Assessee company stood dissolved on amalgamation with M/s B. S. Infratech Pvt. Ltd.?"

5. The Court takes up for consideration the above question first. It is not in dispute that the Assessee which was initially incorporated on 1st January,

1999 merged with M/s B. S. Infratech Pvt. Ltd. with effect from 1st April, 2008 by the order of this Court.

6. In the present case, a search took place on 20th October, 2008 in the cases of Mr B. K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd. On the basis that in the course of search certain documents belonging to the Assessee company were found, notice was issued to the Assessee under Section 153C (1) on 10th September, 2010. Therefore, not only on the date on which notice was issued but even on the date of the search, the Assessee had ceased to exist in the eyes of law.

7. In identical circumstances, in cases arising out of the same search, this Court has by its order dated 19th August, 2015 in the Revenue's appeals ITA Nos.582, 584, 431, 533, 432 & 433 of 2015 (*Pr. Commissioner of Income Tax (Central-II) v. Images Credit And Portfolio Pvt. Ltd.*) and order dated 29th September, 2015 in ITA Nos.745, 746,748, 749 and 750/2015 (*Pr. Commissioner of Income Tax (Central-2) v. M/s Mevron Projects Pvt. Ltd.*) invalidated the assessment proceedings against the Assessee in those cases which, on account of having merged with another entity with effect from a date anterior to the search, also no longer existed on the date of search, on the date of the issue of notice and consequent assessment order passed under Section 153 C of the Act.

8. In that view of the matter, the question framed in para 4 above is answered in the negative i.e. favour of the Assessee and against the Revenue.

9. In view of the above conclusion, the Court does not consider it necessary to answer other question framed.

10. The appeals are dismissed and the pending cross objections are disposed of in the above terms.



S. MURALIDHAR, J



VIBHU BAKHRU, J

OCTOBER 15, 2015
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