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

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ITA 466/2015

COMMISSIONER OF INCOME
TAX, (CENTRAL II)

..... Appellant

Through: Ms Suruchi Aggarwal, Senior Standing
Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel.

versus

MAYANK TRADERS(P) LTD.
Through

..... Respondent

WITH

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ITA 467/2015

COMMISSIONER OF INCOME
TAX, (CENTRAL II),

..... Appellant

Through: Ms Suruchi Aggarwal, Senior Standing
Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel.

versus

MAYANK TRADERS(P) LTD.
Through

..... Respondent

WITH

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ITA 470/2015

COMMISSIONER OF INCOME
TAX, (CENTRAL II)

..... Appellant

Through: Ms Suruchi Aggarwal, Senior Standing

Signature Not Verified
Digitally Signed
By:AMULYA

Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel.

versus

MAYANK TRADERS(P) LTD.

..... Respondent

Through

WITH

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ITA 471/2015

COMMISSIONER OF INCOME TAX,
(CENTRAL II)

..... Appellant

Through: Ms Suruchi Aggarwal, Senior Standing
Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel.

versus

MAYANK TRADERS(P) LTD.

..... Respondent

Through

AND

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ITA 477/2015

PR. COMMISSIONER OF INCOME
TAX, (CENTRAL II),

..... Appellant

Through: Ms Suruchi Aggarwal, Senior Standing
Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel.

versus

MAYANK TRADERS(P) LTD.

..... Respondent

Through

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU**ORDER**

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20.08.2015

1. These appeals by the Revenue are directed against the common order dated 28th November, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.5307, 5308/Del/2013 and 2356 & 2357/Del/2014 for the Assessment Years ('AY') 2005-06, 2006-07, 2003-04 and 2004-05.

2. The Respondent in the relevant AYs was engaged in the business of fabrication of cloth and textiles. A search was conducted in the premises of the Respondent on 20th October, 2008 and notices under Section 153A (1) of the Act were issued to it on 29th March, 2010 requiring into to file its return for the AYs previous to the relevant AY in which the search was conducted. One of the grounds urged by the Respondent was that following its merger with Optus Promoters Pvt. Ltd. ('OPPL') from 1st April 2008 in terms of the order of this Court dated 18th October 2010, the initiation of proceedings against it under Section 153A by the aforementioned notice was bad in law.

3. After the Assessing Officer (AO) rejected the above plea, the Respondent appealed to the Commissioner of Income Tax (Appeals) [CIT (A)]. The CIT (A) also rejected the plea noting that the return of income filed on 18th

November 2010, nearly eight months after the notice dated 29th March 2010 under Section 153A (1), was in the name of Mayank Traders P Ltd and that no reference was made to its amalgamation with OPPL. The CIT (A) further noted that the Respondent was corresponding with the AO by letter dated 18th November, 2010 in its own name without referring to its amalgamation with OPPL and it was only in the month of December, 2010 when the limitation period for assessment was nearing an end that the AO was informed about the amalgamation with OPPL.

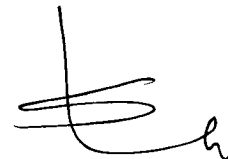
4. The ITAT in the impugned order has referred to the decision dated 17th September, 2009 of this Court in ITA No.273/2009 (*CIT v. Vived Marketing Services Pvt. Ltd.*) which held that an assessment could not be validly framed on a non-existent entity.

5. Recently this Court has in an order dated 19th August 2015 in ITA No. 582 of 2015 (*PCIT v. Images Credit and Portfolio Pvt. Ltd*) held that proceedings under Section 153C could not be initiated against an entity that had ceased to exist at the relevant time. Similarly, by order dated 3rd August 2015 in ITA No. 475/2000 (*Spice Entertainment Ltd. v. CIT*) it was held by this Court that the defect of passing an assessment order in respect of an

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entity that had ceased to exist on the date of such order, could not be treated as a mere procedural defect. The mere fact that the Respondent communicated to the AO, prior to the Assessment order and subsequent notice, in its name without disclosing the fact of amalgamation with OPPL, will not cure the fundamental defect of the assessment having been framed against an entity that had ceased to exist in the eye of law.

6. Consequently, the impugned common order of the ITAT following the decision of this Court in *Vived Marketing Services Pvt. Ltd. (supra)* does not call for interference. No substantial question of law arises. The appeals are dismissed.



S.MURALIDHAR, J



VIBHU BAKHRU, J

AUGUST 20, 2015
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