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

19,20,22-24

+ **ITA 745/2015**

PR. COMMISSIONER OF INCOME
TAX (CENTRAL-2)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Junior
Standing counsel & Ms. Radhika Gupta, Advocate.

versus

M/S MEVRON PROJECTS PVT. LTD.

..... Respondent

with

+ **ITA 746/2015**

PR. COMMISSIONER OF INCOME
TAX (CENTRAL-2),

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Junior
Standing counsel & Ms. Radhika Gupta, Advocate.

versus

M/S MEVRON PROJECTS PVT. LTD.

..... Respondent

Through

With

+ **ITA 748/2015**

PR. COMMISSIONER OF INCOME
TAX (CENTRAL-2)

..... Appellant

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

Signature Not Verified

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By:AMULYA  ITA Nos. 745,746,748,749 & 750 of 2015

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Standing counsel & Ms. Radhika Gupta, Advocate.

versus

M/S MEVRON PROJECTS PVT. LTD

..... Respondent

With

+

ITA 749/2015

PR. COMMISSIONER OF INCOME
TAX (CENTRAL-2),

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Junior
Standing counsel & Ms. Radhika Gupta, Advocate.

versus

M/S MEVRON PROJECTS PVT. LTD.

..... Respondent

And

+

ITA 750/2015

PR. COMMISSIONER OF INCOME
TAX (CENTRAL-2)

.... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Junior
Standing counsel & Ms. Radhika Gupta, Advocate.

versus

M/S MEVRON PROJECTS PVT. LTD.

..... Respondent

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.09.2015

CM APPL No.21516 of 2015(exemption) in ITA 748 of 2015
CM APPL No.21517 of 2015(exemption) in ITA 749 of 2015
CM APPL No.21518 of 2015(exemption) in ITA 750 of 2015

1. Allowed, subject to all just exceptions.

ITA Nos. 745 of 2015, 746 of 2015, 748 of 2015, 749 of 2015 & 750 of 2015

2. These five appeals by the Revenue are directed against the common order dated 20th February 2015 passed by the Income Tax Appellate Tribunal ('ITAT') for the Assessment Years ('AYs') 2003-04, 2005-05, 2006-07, 2007-08, 2008-09.

3. A search and seizure operation under Section 132 of the Act was carried out in the case of B.K. Dhingra, Poonam Dhingra and Madhusudan Buildcon Pvt. Ltd 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 Assessee. A notice was issued under Section 153C of the Act to the Assessee first on 8th July 2010. In response thereto the Assessee filed a return on 18th September 2010 for AY 2003-04 declaring its income. The Assessing Officer ('AO') by order dated 31st December 2010 assessed the income as Rs.32,25,180.

4. In the appeal filed before the Commissioner of Income Tax (Appeals) [CIT (A)], the Assessee pointed out that following its amalgamation with

Windchimes Construction Pvt. Ltd ('WCPL') with effect from 1st April 2008 as per the order of the High Court dated 16th August 2010, the assessment was required to be made on WCPL. *Inter alia*, reliance was placed on the decisions of this Court in *Spice Entertainment Ltd. v. CIT* (ITA No. 475 of 2000) and *Pampasar Distillery Ltd. v. ACIT (2007) 15 SOT 331 (ITAT/Kolk)*.

5. The CIT (A), however, noted that in response to the notice under Section 153C the Director of the Assessee had used the letterhead of the Assessee in writing a letter dated 10th November 2010, in which there was no mention of amalgamation. The CIT (A) also noted that a return of income was filed in the name of the Assessee itself without disclosing the above fact and rejected the ground of the Assessee. The ITAT, however, accepted the contention of the Assessee that a notice issued under Section 153C of the Act to an entity which had already become non-existent on account of its merger with other company could not be a valid basis for framing an assessment against the Assessee.

6. This Court has, by a detailed order dated 19th August 2015 in *Pr. Commissioner of Income Tax v. Images Credit & Portfolio Pvt. Ltd.* (ITA Nos. 582, 584 and 431 of 2015), negated the challenge by the Revenue to a similar order of the ITAT, which affirmed the order of the CIT (A) and held that continuing proceedings under Section 153C of the Act against an entity

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which was not in existence in law deserved to be quashed. The only distinguishing feature in the present case is that while the entity to which the notice was issued under Section 153 C of the Act was in existence on the date of the notice i.e. 6th July 2010, it ceased to be in existence on the date of framing the assessment pursuant to such notice.

7. In the present case the defect of the AO in framing an assessment on 31st December 2010 against the Assessee by which time it was not in existence on account of its merger with WPCL (effective 1st April 2008) was not a curable defect. Consequently, the impugned order of the ITAT setting aside the order of the CIT (A) does not suffer from any legal infirmity.

8. No substantial question of law arises for consideration. The appeal is dismissed.



S.MURALIDHAR, J



VIBHU BAKHRU, J

SEPTEMBER 29, 2015/mg