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

\+ W.P.(C) 694/2016

BDR BUILDERS AND DEVELOPERS PVT. LTD. (SUCCESSOR-IN INTEREST OF ERSTWHILE M/S. KUBER REALTECH PVT. LTD.) ..... Petitioner

Through: Mr. Salil Aggarwal, Mr. Prakash Kumar and Mr. Ravi Partap, Advs.

versus

INCOME TAX OFFICER, WARD-14(4), NEW DELHI.. Respondent

Through: Mr. Rahul Chaudhary, Senior Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 09.01.2017

The petitioner in these proceedings under Article 226 of the Constitution challenges a notice under Section 147/148 of the Income Tax Act , 1961 ('the Act' for short) issued on 30th March, 2015 for Assessment Year (AY) 2007-08.

The brief facts of the case are that M/s Kuber Realtech Pvt. Ltd. had filed its return for AY 2008-09 on 29.06.2008; which was processed under Section 143(1) of the Income Tax Act, 1961 (in short the Act) on 19.08.2009. Subsequently, by virtue of order of this Court dated 20.02.2013 under Section 394 of the Companies Act, 1956, the original assessee was amalgamated with M/s BDR Builders and Developers Pvt. Ltd. In these circumstances, it is contended that the issuance of the impugned notice on 30.03.2015, in the name of M/s Kuber Realtech Pvt. Ltd. is unsustainable and illegal for the reason that the entity no longer exists.

The short ground of defence by the Revenue is that the original assessee M/s Kuber Realtech Pvt. Ltd. was in existence at the time when the assessment was framed under Section 143(1) of the Act. It is contended that the subsequent material which has come to light with respect to claim for Rs. 19,25,000/-, which in fact is fictitious and bogus claim, therefore, has to be proceeded with under Section 147 of the Act. The learned counsel highlights that the re-assessment notice is based upon tangible materials within the expression understood in the law relating to Section 147/148 of the Act.

It is quite evident from the factual material itself that the assessment was completed – though under Section 147/148 of the Act on 19.08.2009; now almost six years later the Revenue seeks to proceed against the original assessee even though it is not in existence. *M/s. Rustagi Engineering Udyog (P) Ltd. v. Deputy Commissioner of Income Tax* [2016] 67 Taxman.com 284 (Delhi): 382 ITR 443 is an authority to the proposition that where the entity is merged or amalgamated and loses its existence, a notice of the kind impugned in this case cannot be maintained and has to be quashed. Following the reasoning in *M/s. Rustagi Engineering Udyog (P) Delhi* (supra), it is hereby declared that the impugned notice is illegal and void. It is hereby quashed. The writ petition is allowed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 09, 2017/acm