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

+ **ITA 466/2017**

PR.COMMISSIONER OF
INCOME TAX (CENTRAL)-1

..... Appellant

Through: Mr. Deepak Anand, Advocate with Mr.
Zoheb Hossain, Advocate.

versus

KAIZEN PRODUCTS [P] LTD. PRESENTLY KNOWN AS AAS
RESEARCH & SOLUTIONS [P] LTD. UPON AMALGAMATION
WITH VENTURA RESEARCH & SOLUTIONS [P] LTD.

..... Respondent

Through: Mr. Gautam Jain, Advocate with Mr.
Piyush Kumar Kamal, Advocate

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER

% **25.07.2017**

1. This is an appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') directed against an order dated 16th December, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2808/Del/2016 for the Assessment Year ('AY') 2009-10.

2. The question sought to be urged by the Revenue in this appeal is whether the ITAT was justified in quashing the order passed by the Principal Commissioner of Income Tax ('PCIT') under Section 263 of the Act, whereby the assessment order dated 23rd/24th July, 2014 passed by the Assessing Officer ('AO') under Section 147/143(3) of the Act was set aside and the AO was directed to re-examine the assessment and pass the

necessary orders after giving due opportunity to the Assessee.

3. The facts in brief are that the Respondent, presently named AAS Research & Solutions Pvt. Ltd. ('ARSPL'), was formerly Ventura Research & Solutions (P) Ltd. ('Ventura'). There was a merger of Kaizen Products (P) Ltd. ('KPPL') with Ventura by virtue of an order dated 8th October, 2010 passed by this Court.

4. Prior thereto, on 19th September, 2009, for the AY 2009-10, a return of income had been filed by KPPL declaring an income of Rs.17,96,366. In respect of the said return of income, a notice dated 9th April, 2013 under Section 148 of the Act was issued to KPPL by the AO stating that KPPL had received accommodation entries amounting to Rs.3.75 crores from Shalini Holdings Ltd. (SHL) which was operated by Mr. S.K. Jain, an entry operator.

5. In the course of the re-assessment proceedings, notice was issued to KPPL under Sections 142 (1) and 143 (2) of the Act. Notices were also issued to SHL. According to the learned counsel for the Respondent, during the course of the re-assessment proceedings, the AO was informed by Mr. Vishal Malik, whose statement is recorded on oath and happened to be a former Director of KPPL, *inter alia* that "the Company got merged in AAS Research and Solutions (P) Ltd. on 8/10/2010" and that he was "working as a Director in the company also". Therefore, the AO was also aware, at that stage, that KPPL did not exist in law as it had merged with Ventura and had come to be renamed as 'AAS Research and Solutions (P) Ltd'.

6. At the end of that exercise, on 23rd/24th July, 2014, the AO passed the assessment order under Section 147/143(3) of the Act, accepting the return as filed by the Assessee.

7. It appears that, as the deadline of 2 years thereafter was coming to an end on 23rd March, 2016, a notice was issued by the PCIT to KPPL under Section 263 of the Act. Clearly on this date, KPPL did not exist in the eye of law. Apparently, no one appeared before the PCIT pursuant to the said notice returnable date for which was fixed on 30th March, 2016 i.e., exactly one week thereafter. Thereafter on 31st March, 2016 i.e., the date of the expiry of 2 years, the PCIT passed an order under Section 263 of the Act in the manner indicated hereinbefore.

8. In the appeal filed by the Assessee i.e., ARSPL, before the ITAT one of the contentions raised by the Assessee was that the impugned order under Section 263 of the Act by the PCIT had been passed against an entity which did not exist in the eye of law. Relying on the decision of this Court in ***Spice Infotainment Ltd. v. Commissioner of Income Tax 2012 (247) CTR 500 (Del)***, it was urged that the entire proceedings under Section 263 of the Act stood vitiated.

9. The stand taken by the Revenue before the ITAT was that during the proceedings under Section 147 of the Act, the Assessee had not raised any objections on this ground and, therefore, it should not be permitted to raise the objection before the ITAT “at this belated stage”.

10. The ITAT followed the decision of this Court in ***Spice Infotainment Ltd.*** (*Supra*) and held that the impugned show cause notice dated 23rd March, 2016 and the impugned order of the PCIT dated 31st March, 2016 were both in the name of non-existent entity and, therefore, *void ab initio*.

11. The ITAT also proceeded to discuss the merits of the order dated 31st March, 2016 passed by the PCIT under Section 263 of the Act and came to the conclusion that it is unsustainable in law. However, for the purpose of the present appeal, the Court does not consider it necessary to examine the order of the PCIT on merits for the simple reason that the law as it stands today is governed by the decision in the ***Spice Infotainment Ltd.*** (*supra*).

12. It must be pointed out that the counsel for the Revenue has drawn the attention of this Court to an order dated 10th January, 2014 passed by the Supreme Court in Special Leave Petition (Civil) No. 12065/2012 granting the Revenue a leave to appeal against the decision of this Court in ***Spice Infotainment Ltd.*** (*supra*). However, it is noticed that while leave has been granted, no stay has been granted of the decision of this Court. As of date the decision in ***Spice Infotainment Ltd.*** (*supra*) continues as good law.

13. The legal position as explained in the said decision is very clear. It is observed that “the framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a ‘dead person’.” The said decision was followed by this Court in ***Rustagi Engineering Udyog P. Ltd. v. Deputy Commissioner of Income***

Tax (2016) 382 ITR 443 (Del).

14. In the present case, it is not in dispute that KPPL ceased to exist as a result of the order dated 8th October, 2010 passed by this Court whereby its merger with Ventura stood approved. Ventura was later renamed as ARSPL. These facts were known to the AO in the course of the assessment proceedings. The statement of the Director of KPPL formed part of the assessment record. Consequently, the issuance of the notice dated 23rd March, 2016 by the PCIT under Section 263 of Act and consequential order dated 31st March, 2016 were in respect of a non-existent entity and were clearly void *ab initio*, as correctly held by the ITAT. This, by itself, was sufficient for the ITAT to set aside the impugned order dated 31st March, 2016.

15. No substantial question of law arises from the impugned order of the ITAT.

16. The appeal is dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 25, 2017
'anb'