**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**INCOME TAX APPEAL NO. 1168 OF 2017**

Pr. Commissioner of Income Tax-5 ….Appellant

V/s.

M/s Westlilfe Development Ltd. …Respondent

----

Mr. N. C. Mohanty for Appellant
Mr. Percy Pardiwalla, Senior Advocate i/b Ms Aasifa Khan for Respondent

----

**CORAM : K.R. SHRIRAM &**
**R. I. CHAGLA, JJ**
**DATED : 28th SEPTEMBER 2021**

**P.C. :**

1 The Income Tax Appellate Tribunal (ITAT) had allowed the appeal filed by respondent against the order passed by Principal Commissioner of Income Tax (CIT) under Section 263 of the Income Tax Act, 1961 (the said Act).

2 In a nutshell, the Assessing Officer had passed an order of assessment order, admittedly, against non existing entity. Against that order, CIT exercising his powers under Section 263 of the Act set aside the order of the Assessing Officer and remanded the matter back for a denovo consideration. The Assessing Officer had also not considered certain points regarding valuation of shares and payments for those shares. The assessee-respondent preferred an appeal before the ITAT against the order of remand of CIT and the ITAT had passed an order setting aside the order of CIT on the grounds that any order against non existent entity is bad in law. The ITAT held that framing of assessment against non existing entity would go to root of

matter and was not mere procedural irregularity, but a jurisdictional defect. ITAT held that assessment proceedings having been initiated against the non existing company even after amalgamation of assessee company with another company were illegal, and thus order passed under such proceedings was without jurisdiction and null and void.

3 Aggrieved by this order of ITAT this appeal has been preferred. We totally agree with the view expressed by ITAT that framing of assessment against non existing entity would go to the root of matter and was a jurisdictional defect. The assessment proceedings against non existing company was illegal and any order passed therein was without jurisdiction and null and void as held by this court in the matter of ***Alok Knit Exports Ltd. Vs. The Deputy Commissioner of Income Tax Circle 6(1)(1) & Anr.***[1]

4 In our view, the ITAT has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

5 The appeal is devoid of merits and it is dismissed with no order as to costs.

**(R. I. CHAGLA J)** **(K.R. SHRIRAM, J.)**

1 2021 SCC Online Bom 1851