

HC slam AO for issuing reassessment notice in name of Transferor-Company after amalgamation

Summary – The High Court of Delhi in a recent case of BDR Builders & Developers (P.) Ltd., (the Assessee) held that Notice in name of transferor company after amalgamation was void ab initio; search in name of transferor company could not be ground to initiate abated/time barred reassessment proceedings

Facts

- The petitioner-assessee was engaged in the business of real estate. Another company VBPPPL was also engaged in the same business of real estate. These companies amalgamated on 1-4-2012. VBPPPL being a transferor company legally ceased to exist as a result of amalgamation. Still on 3.4.2012, a notice of reassessment issued in name of VBPPPL. On 26.4.2012, the Assessing Officer was informed on behalf of VBPPPL stating that the return originally filed by it should be treated as a return in response to the notice under section 148.
- The reasons to reopen assessment was also furnished stating that certain investigations in respect of the bogus accommodation entries provided by one of the person revealed that the transferor company was one of the beneficiaries of these alleged bogus transactions. Therefore, the Assessing Officer had reason to believe that income chargeable to tax for the relevant year had escaped assessment.
- On 20-2-2013, the scheme of amalgamation was approved by the High Court. The PAN of VBPPPL was surrendered on 16-10-2013. In the Company Court proceedings, the Regional Director ('RD') had filed an affidavit objecting to raise capital at a huge premium on 4-12-2012. On 26-12-2013, the Petitioner objected to reopening of assessment. On 3-1-2014, warrant of authorization and panchnama was drawn in name of VBPPPL. A notice was issued under section 153A to VBPPPL for assessment year 2008-09 on 22-4-2015. On 5-5-2015, objection was again raised that VBPPPL had already been amalgamated with the Petitioner, hence, the warrant and the panchnama in the name of VBPPPL was *non est* as VBPPPL was non-existent. A search and seizure was carried out in the premises of Directors of the Petitioner, with which the Petitioner was not associated. No single documents belonging to VBPPPL was found. On 16-11-2015, another notice under section 153A was issued to the Petitioner as successor in interest of VBPPPL. On 29-1-2016, the Joint Commissioner gave approval for dropping of the proceedings under section 153A. On 1-2-2016, the Assessing Officer issued notice under section 142(1) to VBPPPL to submit accounts and documents. On 11-2-2016, the Petitioner informed that there was no pending income tax proceeding in the case of VBPPPL. Hence, the said notice was to be withdrawn. On 23-2-2016, again notice under section 143(2) with questionnaire were drawn concerning VBPPPL. On 29-2-2016, the Petitioner protest against the said notice. On 3-3-2016, the Assessing Officer withdrew notice and the questionnaire. On 14-3-2016, the Assessing Officer issued the impugned notice under section 148 on the ground that with the dropping of the proceedings under section 153A the proceedings under section 148

which was abated had revived. The revenue contended that the original notice issued on 3-4-2012 to the Petitioner was within the time period of 4 years; hence, the instant notice was valid.

- On writ to the High Court:

Held

- At the outset it requires to be noted that the effect of the order passed by this Court on 20-2-2013 was that the VBPPPL (which was one of the transferor companies) amalgamated with the petitioner with effect from 1-4-2012. Therefore, by operation of law, VBPPPL ceased to exist with effect from 1-4-2012. The fact that the order of the High Court may have been passed only on 20-2-2013, and that the Department became aware of that fact even later, will not make any difference to the legal position.
- Any notices to the transferor company (which included VBPPPL) that may be issued thereafter would be responded to by the Petitioner. This is not to be understood to mean that proceedings initiated against any of the transferor companies, including VBPPPL, by the Department prior to that date would be continued against the petitioner. What it meant was that notices issued thereafter to VBPPPL after it ceased to exist would be responded to by the petitioner. That condition has been complied with since in fact the petitioner answered the notices issued to VBPPPL after 1-4-2012.
- The resultant position is that on 3-4-2012 when the notice under section 148 was issued to VBPPPL, it was issued to an entity which was non-existent in the eye of law.
- In the present case not only was the initial notice under section 148 issued to a non-existent entity even the search under section 153A took place against a non-existent entity. Both the warrant of authorisation and the panchnama were drawn in the name of VBPPPL on 3-1-2014 by which date even the order of the High Court approving the amalgamation of the VBPPPL with the Petitioner had been passed. Clearly, therefore, the entire proceedings under section 153A were void *ab initio*. Therefore, the question of invoking section 153A(2) to revive the abated re-assessment proceedings under section 147/148 did not arise.
- It requires reiteration that the proceedings under section 148 which commenced with the notice dated 3-4-2012 issued to VBPPPL were itself void *ab initio* for the simple reason that on that day VBPPPL was not in existence as a result of the order dated 20-2-2013 of the High Court approving its amalgamation with the petitioner with effect from 1-4-2012. The question of revival of such proceedings at a later point in time, with there being no change to the legal position regarding VBPPPL having ceased to exist, does not arise. The mere fact that prior to 20-2-2013 (being the date of the order approving the amalgamation) VBPPPL and/or the petitioner may have responded to such notices, will not make a difference to the said legal position. The facts show that after 20-2-2013, the petitioner lost no opportunity in reminding the Assessing Officer at every stage that VBPPPL no longer existed in the eye of law. Despite being made aware of this legal position, the Assessing Officer persisted in continuing the proceedings against VBPPPL.

- The reassessment proceedings under section 147 were barred by limitation since limitation for framing the assessment under section 143(3) read with section 147 expired on 31-3-2014. On this ground also, the question of revival of those proceedings by the impugned letter dated 14-3-2016 was bad in law.
- The notice dated 3-4-2012 and the letter 14-3-2016 issued by the Assessing Officer under section 148 seeking to reopen the assessment of the assessee for the assessment *year in question is to be* quashed.