

(2022) 05 DEL CK 0224

In the Delhi High Court

Case No : Civil Writ Petition No.) 8699 Of 2022, Civil Miscellaneous Application
No. 26224 Of 2022

Baxter India Private Limited Gambro India Private Limited
Now Merged With Baxter India Private Limited

APPELLANT

Vs

Additional / Joint / Deputy / Assistant Commissioner Of
Income Tax / Income Tax Officer National Faceless
Assessment Centre- 7 & Ors

RESPONDENT

Date of Decision : 31-05-2022

Acts Referred:

Income Tax Act, 1961 — Section 144, 144B, 147, 148, 156

Citation : (2022) 05 DEL CK 0224

Hon'ble Judges : Manmohan, J; Manmeet Pritam Singh Arora, J

Bench : Division Bench

Advocate : Kamal Sawhney, Prashant Meharchndani, Arun Bhadauria, Nikhil
Agarwal, Nishank Vashistha, Zoheb Hossain, Vipul Agarwal, Parth Semwal

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ petition has been filed challenging the impugned assessment order dated 31st March, 2022 passed for the Assessment Year 2016-17 under Section 147 read with Sections 144 & 144B of the Income Tax Act, 1961 (for short 'Act') as well as demand notice dated 31st March, 2022 issued under Section 156 imposing a demand of Rs.8,58,76,140/-.

2. Learned counsel for the Petitioner states that notice has been issued by a non-jurisdictional assessing officer to a non-existent entity. He states that the Respondent No.2 (the then jurisdictional Assessing Officer) was duly intimated much before he wrongfully initiated the impugned reassessment proceedings that Gambro India Private Limited has merged with Petitioner with effect from 01st April, 2015 and therefore stands dissolved. He states that the present case is squarely covered by the decision of the Supreme Court in Principal Commissioner

of Income tax, New Delhi vs. Maruti Suzuki (India) Limited, (2020) 18 SCC 331 and this Court's decision in Spice Infotainment vs. Commissioner of Income tax, (2012) 247 CTR (Del) 500 confirmed by the Supreme Court's order dated 02nd November, 2018, wherein the Supreme Court has held that assessment against a non-existent entity is void ab initio.

3. He further states that since Gambro India has ceased to exist w.e.f 01st April, 2015, it neither has a separate existence nor has any audited financials and consequentially no income to be assessed separately for the relevant Financial Year (FY) 2015-16. He states that the Petitioner has already filed return of income for the relevant FY with Respondent No.3 (jurisdictional AO, Delhi) and is already being assessed in Delhi by Respondent No.3 for the relevant FY and reassessment proceedings under Section 148 are pending against the Petitioner before the Respondent No.3. Thus, he states that a second and separate reassessment proceeding for the relevant FY vide the impugned notice and impugned order against a non-existent company, Gambro India, is void ab initio.

4. Per contra, learned counsel for the Respondents states that the present case is covered by the latest judgment of the Supreme Court in Principal Commissioner of Income Tax (Central) – 2 vs. Mahagun Realtors (P) Ltd., 2022 SCC OnLine SC 407.

5. In rejoinder, learned counsel for the Petitioner states that the impugned assessment order is contrary to the judgment of the Apex Court in Mahagun Realtors (P) Ltd. (supra).

6. However, a perusal of the paper book reveals that none of the aforesaid submissions and contentions have been considered by the Assessing Officer. Since in the present case, the issue of jurisdiction is a mixed question of fact and law, this Court is of the view that it is necessary that the Assessing Officer gives its opinion on the said issue. Accordingly, this Court sets aside the impugned assessment order and demand notice under Section 156. The Assessing Officer is directed to consider the aforesaid submissions and contentions advanced by the parties as well as the reply dated 29th March, 2022 filed by the Petitioner and pass a fresh reasoned order in accordance with law within twelve weeks.

7. With the aforesaid direction, the present writ petition and application stand disposed of.