

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA Nos.193, 228 & 229/Del/2022  
(Assessment Years: 2012-13, 2013-14 & 2015-16)**

ACIT, Central Circle-26, Delhi Room No.323, ARA Centre, Jhandewalan, Extn. New Delhi - 110055	Vs.	M/s Jai Maa Bhawani Overseas Pvt. Ltd. B-5/263, Sector-3 Rohini, New Delhi- 110085
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AABCJ0239L		
Appellant	..	Respondent

**C.O. Nos.17 to 19/Del/2023  
(Arising out of ITA Nos. 193, 228 & 229/Del/2022  
(Assessment Years: 2012-13, 2013-14 & 2015-16)**

M/s Jai Maa Bhawani Overseas Pvt. Ltd. B-5/263, Sector-3 Rohini, New Delhi- 110085	Vs.	ACIT, Central Circle-26, Delhi Room No.323, ARA Centre, Jhandewalan, Extn. New Delhi - 110055
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AABCJ0239L		
Appellant	..	Respondent

Appellant by :	Ms. Shilpi Jain
Respondent by :	Sh. Sanjay Pandey

Date of Hearing	08.08.2024
Date of Pronouncement	22.08.2024

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## ORDER

### **PER MADHUMITA ROY, JM:**

The group of appeals and the cross objections filed by the assessee and revenue are directed against the orders all dated 24.11.2021 arising out of the orders all dated 26.12.2018 passed by the ACIT, Central Circle 26, New Delhi under Sections 153C/144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in Assessment Years 2012-13, 2013-14 and 2015-16.

2. The assessee has filed the cross objections mainly raising the ground of maintainability of the proceedings and against the order passed by the Assessing Officer under Sections 153C/144 of the Act, as the same were passed against the non-existing companies. Since, this particular ground goes to the route of the matter, we have decided to proceed with the same at the threshold.

3. The brief facts leading to the case are that a search action under Section 132 of the Act was carried out in the case of one Shri Anand Kumar Jain and Shri Naresh Kumar Jain (Jain Group) on 17.12.2015 wherein various documents/books of accounts were found and seized on examination of which it revealed that these two persons were engaged in the business of providing accommodation entries to various beneficiaries though the various dummy/paper companies including the assessee's company controlled and managed by the said Jain brothers to provide accommodation entries to such beneficiaries in lieu of cash received by them after relating the cash money from one company to the other and so on. Notice under Section 153A/153C was issued on 28.03.2018 directing the assessee to file return within 15 days from the date of receipt of the said notice and finally the assessment proceedings was

completed upon making addition against the assessee which was deleted by the Ld. CIT(A). However, the ground taken before us that the assessment order passed by the Ld. A.O was finalized on non-existing company though raised before the Ld. CIT(A), the same was dismissed. Hence, the cross objections filed by the assessee before us.

4. At the time of hearing of the instant appeal, the Ld. Counsel appearing for the assessee submitted before us that the name of the company has been struck off from the Register of the Companies on 02.09.2018 and the company has been dissolved. In this respect, he has referred page No. 1 of paper book filed before us wherein the argument advanced by the assessee is reflecting in writing in Form No. STK7 being the notice of striking off/removal of names of the companies from the Register of Companies, pursuant to sub-section (5) of Section 248 of the Companies Act, 2013 and Rule 9 thereof. It was further placed on record by the Ld. Counsel that the assessment order in the case of M/s BRR Securities Pvt. Ltd. this fact of striking off the name of the company namely M/s Jai Maa Bhawani Overseas Pvt. Ltd. having PAN No. AABCJ0239L has been duly mentioned by the same Assessing Officer being the ACIT , Central Circle-26, New Delhi. In this regard, he has referred page No. 3 of the paper book filed before us being Assessment Order dated 19.12.2018 passed in the matter of M/s BRR Securities Pvt. Ltd.

5. In view of the matter, as it is a settled principle of law that the said proceedings since finalized against a non-existing company the same is not sustainable in the eyes of law and therefore, liable to be quashed was the crux of her argument. The Ld. Counsel appearing for the assessee also relied upon the order passed by the Coordinate Bench in the case of

KCJ Buildtech Pvt. Ltd. in ITA No. 9643 to 9645/Del/2019 for AYs. 2012-13, 2013-14 and 2014-15.

Such submissions made by the Ld. A.R has not been able to be controvert by the Ld. D.R.

6. We have heard the rival submission made by the respective parties, we have further perused the relevant materials available on record. In this regard, we have taken note of the fact of striking off name of the assessee's company from the Register of Companies dated 02.09.2018 appearing at page No. 1 of the paper book file before us. Further, we find that particular aspect of striking off the name of assessee's companies from the Register of Company was already with the knowledge of the Ld. A.O which is reflecting in the order passed by the same AO in the Assessment Order dated 19.12.2018 passed in the case of M/s BRR Securities Pvt. Ltd. wherein a list of 21 companies have been mentioned in paragraph 6.3. The assessee's name is appearing at serial No. 5 therein, the relevant portion whereof is as follows:

"6.3 During the course of assessment proceedings it is noticed tht in the following concerns assessment proceedings are pending and following companies are struck off by Sh. Anand Kumar Jain and Sh. Naresh Kumar Jain out of above 53 concerns:

Sr. No.	Name of the assessee	PAN
1.	Ceram Sales Pvt. Ltd.	AADCC0084A
2.	Chandra Buildcon Pvt. Ltd.	AACCC5263G
3.	CVH Sea Lifes Ltd.	AACCC5820B
4.	Gomati Consultants Pvt. Ltd	AACCG3616M
5.	Jai Maa Bhawani Overseas Pvt. Ltd.	AABCJ0239L
6.	JKS Impex Pvt. Ltd.	AABCJ6878R
7.	Karda Traders Pvt. LTd.	AADCK7802Q
8.	KCJ Buildtech Pvt. Ltd.	AACCK8322Q
9.	M3M Traders Pvt. Ltd.	AACCD3923E
10.	Macro IT System Pvt. Ltd.	AAECM7259E
11.	Next Generation Exim Pvt. Ltd.	AACCN9821B
12.	Sai Infoweb Pvt. Ltd.	AALCS5794H

13.	Shivji Garments Pvt. Ltd.	AALCS3760M
14.	Sunshine Inn Pvt. Ltd.	AAACS2056D
15.	Yunan Sales Pvt. Ltd.	AAACY2963R
16.	Zeus Inpex Pvt. Ltd.	AAACZ3569Q
17.	Shivangi Garments Pvt. Ltd.	AALCS3264J
18.	Kanu Peripherals Pvt. Ltd.	AADCK3958P
19.	New Era Tradeexpo Pvt. Ltd.	AACCN8169N
20.	Sapphire Polyvinyl Pvt. Ltd.	AARCS2813D
21.	Jay Enn Infotech Pvt. Ltd.	AAACJ9991N

7. In this regard, we have further considered the order passed by the Coordinate Bench. While dealing with the identical issue the Coordinate Bench has been pleased to observe as follows:

“9. We have heard the respective parties and also perused the relevant materials available on record including the orders passed by authorities below. We have further considered the fact of striking of by the ROC on 16.01.2016 which is appearing at page 1 filed by the assessee on 03.08.2023. It is an admitted position that though the initiation of the proceeding was made by issuance of notice under section 153A/153C of the Act dated 28.03.2018 on the assessee, namely; M/s. KCJ Buildtech Pvt. Ltd., during the pendency of such proceedings, the name of the assessee was struck off by the role of ROC on 16.01.2017 by its application dated 06.07.2016 at page 1 of the paper book and knowledge whereof with AO is evident from assessee at pages 17-18 in the assessment order dated 19.12.2018 in the case of different assessee M/s. Nine Corporate Inception Pvt. Ltd. (formerly known as M/s. SKM creation Pvt. Ltd.) noted by the same Assessing Officer being ACIT, Central Circle – 26, New Delhi, the contents whereof is as follows:

“6.3 During the course of assessment proceedings it is noticed that in the following concerns assessment proceedings are pending and following companies are struck off by Sh. Anand KumarJain and Sh. Naresh Kumar Jain out of above 53 concerns.

Sr. No.	Name of the assessee	PAN
1.	Ceram Sales Pvt. Ltd.	AADCC0084A
2.	Chandra Buildcon Pvt. Ltd.	AACCC5263G
3.	CVH Sea Lifes Ltd.	AACCC5820B
4.	Gomati Consultants Pvt. Ltd	AACCG3616M
5.	Jai Maa Bhawani Overseas Pvt. Ltd.	AABCJ0239L
6.	JKS Impex Pvt. Ltd.	AABCJ6878R
7.	Karda Traders Pvt. Ltd.	AADCK7802Q
8.	KCJ Buildtech Pvt. Ltd.	AACCK8322Q
9.	M3M Traders Pvt. Ltd.	AACCD3923E

10.	Macro IT System Pvt. Ltd.	AAECM7259E
11.	Next Generation Exim Pvt. Ltd.	AACCN9821B
12.	Sai Infoweb Pvt. Ltd.	AALCS5794H
13.	Shivji Garments Pvt. Ltd.	AALCS3760M
14.	Sunshine Inn Pvt. Ltd.	AAACS2056D
15.	Yunan Sales Pvt. Ltd.	AAACY2963R
16.	Zeus Inpex Pvt. Ltd.	AAACZ3569Q
17.	Shivangi Garments Pvt. Ltd.	AALCS3264J
18.	Kanu Peripherals Pvt. Ltd.	AADCK3958P
19.	New Era Tradeexpo Pvt. Ltd.	AACCN8169N
20.	Sapphire Polyvinyl Pvt. Ltd.	AARCS2813D
21.	Jay Enn Infotech Pvt. Ltd.	AAACJ9991N

10. In the light of the above facts, it is crystal clear that the knowledge of the sticking of the name of the assessee from ROC was with Assessing Officer as on 19.12.2018 being the date of assessment order in respect of the other assessee which under any circumstances cannot be denied by the Revenue authorities, in spite of that, the Assessing Officer in the instant case as proceeded with the assessment proceedings and finalized the same under section 153C r.w.s 144 of the Act dated 26.12.2018. Therefore, order in the case of KCJ Buildtech Pvt. Ltd. is not sustainable in the eyes of law since the said company was not in existence at that material point of time at all. The assessment proceeding, is, thus found to be not maintainable as the assessment order suffers from jurisdictional error. The order is, therefore, admittedly being issued in the name of a non-existing company which has no value in the eyes of law; in fact such irregularities vitiated the entire proceedings and therefore, the same is liable to be quashed. We, thus, with the above observation quash the entire assessment proceedings initiated against the assessee. In the result, Cross objections are allowed.”

8. We find that this particular aspect of striking off the name of the assessee from ROC was well within the knowledge of the same Assessing Officer which is reflecting from the order passed by him in the case of M/s BRR Securities Pvt. Ltd. which cannot be under any circumstances denied are refuted by the revenue. Thus, once the Assessing Officer under this particular facts and circumstances of the matter finalized the assessment order admittedly against the non-existing company the order becomes void and thus, liable to be quashed. We therefore, respectfully relying upon the order passed by Coordinate Bench, quash the order passed by the Ld. AO as the same is not sustainable in the eyes of law. This ratio is also applied mutatis mutandis to the other cross objections

filed by the assessee. Since, the assessment order has been quashed, the appeals preferred by the Revenue are also become infructuous and thus, dismissed as infructuous.

9. In the result, the Cross Objections filed by the assessee are allowed and appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 22.08.2024

Sd/-

(Avdhesh Kumar Mishra)  
ACCOUNTANT MEMBER

Sd/-

(Madhumita Roy )  
JUDICIAL MEMBER

Dated 22.08.2024

PS: Rohit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI