IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17613 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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ANOKHI REALTY PRIVATE LIMITED
Versus
INCOME TAX OFFICER WARD 1(1)(3)

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Appearance:
MS NUPUR D SHAH(10233) for the Petitioner(s) No. 1
MR.VARUN K.PATEL LD. SENIOR STANDING COUNSEL (3802) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 07/08/2023

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1. The present petition under Articles 226 and 227 of the Constitution of India, has been filed with the following prayers:

> *"8(a) The Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order, direction or command in the nature of writ of mandamus holding and declaring that the impugned notices issued in the name of the non-existing entity namely Satyasarthi Estate Organisers Pvt. Ltd. For A. Y 2014-15 to A.Y 2017-18 are ex-facie illegal and bad in law.*
>
> *8(b) The Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned notices issued u/s. 148 of the Income Tax Act by the Respondent (Annexure-D)."*

2. Facts in brief are as under:

2.1 Satyasarthi Estate Organisers Private Limited along with three other companies ceased to exist with effect from 01.04.2009 subsequent to their amalgamation with the petitioner

company being the transferee company. The amalgamation was effectuated vide scheme of amalgamation in accordance with the provisions of the Companies Act.

2.2 The erstwhile company therefore viz. Satyasarthi Estate Organisers Private Limited addressed a letter dated 07.08.2019 to the jurisdictional Assessing Officer intimating that it had amalgamated with Anokhi Reality Private Limited. A copy of the notice in form no.CAA with the draft scheme of amalgamation was enclosed for objections and suggestions.

2.3 Subsequently, Satyasarthi Estate Organisers Private Limited received notices under Section 148 of the Income Tax Act for the years 2014-15 to 2017-18 on various dates between 29.03.2021 and 31.03.2021. The erstwhile company

submitted a reply on 30.01.2020 informing the officer of cancellation of the PAN card due to merger. On 05.07.2021, in response to the notices, the competent officer was informed that since Satyasarthi Estate Organisers Private Limited had merged with the petitioner company with effect from 01.04.2019, the company ceased to be in existence. Orders were passed disposing of objections raised by the erstwhile company for the assessment years 2014-15 to 2017-18 on various dates in July 2021. Notice under Section 142(1) of the Act was also issued on 03.09.2021.

3. Ms.Nupur Shah learned advocate appearing for the petitioner would make the following submissions:

3.1 The notices under Section 148 of the Income Tax Act, 1961, were issued upon a non-existent

entity and therefore they were illegal.

3.2 She would invite the Court's attention to the scheme of amalgamation and submit that as per the provisions of the scheme, the amalgamation was effective from 01.04.2019. In other words, the erstwhile company viz. Satyasarthi Estate Organisers Private Limited had ceased to exist where notices under Section 148 of the Income Tax Act were issued.

3.3 Ms.Shah would further submit that the jurisdictional officer was intimated of the amalgamation vide communications dated 07.08.2019 and 30.01.2020, and therefore the jurisdictional Assessing Officer had due knowledge about the aforesaid amalgamation.

3.4 The impugned notices for reopening of the

assessment proceedings in the case of amalgamated company is impermissible as there is no provision in the Income Tax Act to make an assessment on a non-existent company.

3.5 Ms.Shah would rely on a definition of the term “assessee” and submit that it is evident that an assessee is a person by whom income tax or some other money is payable.

3.6 In support of her submissions, Ms.Shah would rely on the following decisions:

I. In case of ***Gauriputra Estate Holders Private Limited v. Union of India*** rendered in ***Special Civil Application No.17039 of 2021***

II. In case of ***Principal Commissioner of Income Tax, New Delhi*** reported in ***[2019]***

107 taxmann.com 375 (SC)

III. In case of ***Adani Wilmar Ltd. v. Assistant Commissioner of Income-tax*** reported in ***[2023] 150 taxmann.com 178 (Gujarat)***

IV. In case of ***Inox Wind Energy Ltd. v. Additional/Joint/Deputy/ Assistant Commissioner of Income-tax/ Income-tax Officer*** reported in ***[2023] 148 taxmann.com 289 (Gujarat)***

V. In case of ***Marshall Sons & Co. (India) Ltd. v. Income Tax Officer,*** reported at ***[1996] 89 Taxman 619 (SC).***

3.7 Ms.Shah would further submit that upon perusal of the aforementioned judicial pronouncement i.e. ***Marshall Sons & Co.***

(India) Ltd. (supra), it is apparent that transferor company i.e. Satyasarthi Estate Organisers Pvt. Ltd. has ceased to exist w.e.f appointed date i.e. 01.04.2019 and transferee company i.e. Anokhi Realty Pvt. Ltd. would be assessed to tax on the merged income w.e.f. appointed date i.e. 01.04.2019.

3.8 Ms.Shah would further submit that thus, Satyasarthi Estate Organisers Pvt. Ltd. being a transferor company has ceased to exist w.e.f 01.04.2019 so as to say that the notice u/s. 148 of the Act for various AYs 2014-15 to 2017-18 between 29th to 31st March 2021 in the name of transferor company Satyasarthi Estate Organisers Pvt. Ltd. is bad in law.

4. Mr.Varun Patel learned Senior Standing Counsel for the Revenue would make the following

submissions:

4.1 That if the petitioner is aggrieved by the reassessment, an alternative efficacious remedy is available by way of an appeal to the CIT(A) and thereafter the Tribunal.

4.2 That the notices are valid in eyes of law. It is a matter of fact that the scheme of amalgamation was sanctioned on 13.11.2019 with effect from 01.04.2019 so the letter dated 07.08.2019 categorically stated that the approval for sanctioning the scheme is being sought for.

4.3 That it was only on 15.06.2021, did the petitioner raise an objection and that happens to be after 30.03.2021, the date of issuance of notice.

4.4 Mr.Patel would rely on the decision in case of ***Kunvarji Fincorp Private Limited v. Deputy Commissioner of Income Tax Circle 2(1)(1), Ahmedabad*** rendered in ***Special Civil Application No.903 of 2022 and allied matters,*** which considered the decision of the Supreme Court in the case of ***Principal Commissioner of Income-tax v. Mahagun Realtors (P.) Ltd.*** reported in ***[2022] 137 taxmann.com 91 (SC).***

4.5 Extensively reading the decision of the Supreme Court in case of ***Mahagun Realtors (P.) Ltd.*** (supra)***,*** Mr.Patel would submit that the decisions on the subject considered earlier were reconsidered, wherein, it was specifically observed that by virtue of amalgamation unlike the winding up of a corporate entity, the outer-shell of the corporate entity is undoubtedly

destroyed. However, the corporate venture continues. He would rely on para 18 of the decision in case of ***Mahagun Realtors (P.) Ltd.*** (supra). He would therefore submit that the combined effect of reading Section 394(2) of the Companies Act, 1956, Section 2(1A) and various other provisions of the Income Tax Act, it is clear that despite the amalgamation, the business, enterprise and undertaking of the transferee company which ceases to exist after amalgamation and is treated as a continuing one and therefore unlike a winding up, there is no end to the enterprise with the entity. He would therefore submit that the decision of the Supreme Court in the case of ***Pr. CIT v. Maruti Suzuki India Limited*** reported in ***[2019] 107 TAXMANN.COM 375*** was interpreted and distinguished inasmuch as, amalgamation would not make the erstwhile company non-existent.

5. In rejoinder, Ms.Shah would submit that the judgement in ***Mahagun Realtors (P.) Ltd.*** (supra) was distinguishable on facts as observed in the decision of ***Kunvarji Fincorp Private Limited*** (supra). In the case of ***Mahagun Realtors (P.) Ltd.*** (supra) what was observed was that there was no intimation by the assessee regarding amalgamation of the company. The return of income for the assessment year 2006-2007 was filed on 30.06.2006 in the name of MRPL and MRPL amalgamated with MIPL on 11.05.2007 with effect from 01.04.2007. In other words, there was no intimation to the jurisdictional authorities as observed in the decision in the case of ***Inox Wind Energy Ltd.*** (supra).

6. Having considered the submissions made by the learned advocates for the respective parties,

what needs to be considered is whether the notices issued under Section 148 of the Income Tax Act 1961 in between 29.03.2021 to 31.03.2021 for the assessment years 2014-15 to 2017-18 could be said to be issued to non-existent companies ?

6.1 Chronology of dates would indicate that the erstwhile company Satyasarthi Estate Organisers Private Limited amalgamated with the petitioner Anokhi Reality Private Limited though by order dated 13.11.2019, the effective date was 01.04.2019. In the significant accounting policies, it was set out that the merger had taken place w.e.f. 01.04.2019.

6.2 The jurisdictional officer was informed of the amalgamation on 07.08.2019 of the scheme that was to be effective from 01.04.2019. In

other words, the Income Tax Authorities were aware of the fact that the company had amalgamated into the present petitioner company.

6.3 In similar facts, this Court in the case of ***Gauriputra Estate Holders Private Limited*** (supra), on facts, held as under:

> *"3 The subject matter of challenge in the present writ application is to the notice issued under Section 148 of the Income Tax Act, 1961 dated 20th April 2021 for the assessment year 2013-14 calling upon the noticee namely Shivganga Property Holders Private Limited to show cause as to why the assessment for the year 2013-14 should not be reopened under Section 147 of the Act. One another notice has also been issued dated 20th April 2021 for the assessment year 2014-15.*
>
> *4 The principal argument of Ms. Nupur Shah, the learned counsel appearing for the writ applicant is that both the impugned notices referred to above could be said to be without jurisdiction as those have been issued in a wrong name or rather to an assessee which was not in existence on the date of the issue of the notices. Ms. Shah invited the attention of this Court to page :*

57 of the paper book. Page : 57 is a letter dated 17th January 2019 addressed by the Shivganga Property Holders Private Limited to the jurisdictional Assessing Officer informing about the merger / amalgamation of Shivganga Property Holders Private Limited with the M/s. Gauriputra Estate Holders Private Limited i.e. the writ applicant. The letter reads thus:

> *"Dated : 17/01/2019*
>
> *To,*
> *The Income Tax Officer,*
> *Ward No.4(1)(3)*
> *Ahmedabad*
>
> *Ref: SHIVGANGA PROPERTY HOLDERS PRIVATE LIMITED*
> *PAN : AAICS44050*
> *TAN:AHMS11977A*
> *CIN:U45200GJ2005PTC047139*
>
> *Sub : <u>INTIMATION FOR THE MERGER / AMALGAMATION OF THE COMPANY IN TERMS OF SECTION 233 OF THE COMPANIES ACT, 2013 AND REQUEST FOR SURRENDER OF PAN AND TAN OF THE COMPANY</u>*
>
> *Dear Sir,*
>
> *Kindly note that pursuant to Section 233 of the Companies Act, 2013, our Company together with other Transferor Companies as per list attached herewith in Annexure 1 has been amalgamated with M/s.Gauriputra Estate Holders Private Limited ("the Transferee Company") w.e.f. 01 April, 2018 being the appointed date as*

mentioned in the Scheme and the confirmation order Ref: RD (NWR)/233/ (15)/2018/2868 dated 11.09.2018 of the Hon'ble Regional Director, North Western Regional, Ahmedabad, Gujarat. In terms of the said order and final approved scheme our Company being one of the Transferor Company merged with the Transferee Company w.e.f 01st April, 2018 and also shall be stand dissolved without any further acts or deeds.

With respect to above, please find attached herewith as under:

1) Copy of Order for Amalgamation.

2) Copy of duly approved Scheme of Amalgamation.

Accordingly, kindly note that we will be also making necessary applications for surrender of Permanent Account Number (PAN) and Tax Deduction Number (TAN) of the Company.

You are requested to kindly take on your records above development and transfer your records in favour of M/s. Gauriputra Estate Holders Private Limited having PAN: AACCG4800Hand jurisdiction with the Income Tax Department is Ward No. 2(1)(1)Ahmedabad.

Kindly acknowledge the copy of this letter and request to do the needful."

5 Ms. Shah further invited the attention of this Court to the two letters of even date 23rd July 2021 addressed to the

jurisdictional Assessing Officer by the Director of the erstwhile Shivganga Property Holders Private Limited bringing it to his notice that the impugned notice could not have been issued.

6 Mr. M. R. Bhatt, the learned Senior Counsel assisted by Mr. Karan Sanghani, the learned advocate appearing for the Revenue, with his usual fairness, submitted that in view of the intimation as regards the merger / amalgamation way back on 17th January 2019, the two impugned notices could not have been issued."

6.4 The Supreme Court, in the case of ***Maruti Suzuki India Limited*** (supra), was considering the appeal of the revenue arising from a judgement of the Division Bench of the Delhi High Court dated 09.01.2018 which held that the assessment made in the name of Suzuki Powertrain India Limited is a nullity since the entity had been amalgamated with Maruti Suzuki India Limited. The scheme of amalgamation in the facts of the case was approved on 29.01.2013 with effect from 01.04.2012. On 02.04.2013

Maruti Suzuki India Limited intimated the Assessing Officer of amalgamation. Pursuant to certain proceedings under the Income Tax Act, on 11.03.2016, a draft assessment order was passed in the name of Suzuki Powertrain India Limited. On a final assessment order being passed and on an appeal being preferred to the Tribunal, the assessee raised the objection that the assessment proceedings were continued in the name of non-existent or merged entity SPIL and that the final assessment order which was also issued in the name of a non-existent entity, would be invalid.

6.5 In the back-ground of such facts, the Supreme Court after considering various decisions on this issue, held as under:

> *"30 There is no conflict between the decisions of this Court in Spice Enfotainment (supra) and in Skylight*

Hospitality LLP (supra).

31 Mr Zoheb Hossain, learned Counsel appearing on behalf of the Revenue urged during the course of his submissions that the notice that was in issue in Skylight Hospitality Pvt. Ltd. was under Sections 147 and 148. Hence, he urged that despite the fact that the notice is of a jurisdictional nature for reopening an assessment, this Court did not find any infirmity in the decision of the Delhi High Court holding that the issuance of a notice to an erstwhile private limited company which had since been dissolved was only a mistake curable under Section 292B. A close reading of the order of this Court dated 6 April 2018, however indicates that what weighed in the dismissal of the Special Leave Petition were the peculiar facts of the case. Those facts have been noted above. What had weighed with the Delhi High Court was that though the notice to reopen had been issued in the name of the erstwhile entity, all the material on record including the tax evasion report suggested that there was no manner of doubt that the notice was always intended to be issued to the successor entity. Hence, while dismissing the Special Leave Petition this Court observed that it was the peculiar facts of the case which led the court to accept the finding that the wrong name given in the notice was merely a technical error which could be corrected 36 Civil Appeal No. 285 of 2014 and connected cases 37 Special Leave Petition No. 7409 of 2018 under Section 292B. Thus, there is no

conflict between the decisions in Spice Enfotainment on the one hand and Skylight Hospitality LLP on the other hand. It is of relevance to refer to Section 292B of the Income Tax Act which reads as follows:

> *"292B. No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act." In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.*
>
> *In this context, it is necessary to advert to the provisions of Section 170 which deal with succession to business otherwise than on death. Section 170*

provides as follows:

> *"170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—*
>
> *(a) the predecessor shall be assesseed in respect of the income of the previous year in which the succession took place up to the date of succession;*
>
> *(b) the successor shall be assesseed in respect of the income of the previous year after the date of succession.*
>
> *(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions*

of this Act shall, so far as may be, apply accordingly.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assesseed on the predecessor, cannot be recovered from him, the 99[Assessing] Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assesseed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section.

Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession"

Now, in the present case, learned Counsel appearing on behalf of the respondent submitted that SPIL ceased to be an eligible assessee in terms of the provisions of Section 144C read with clause (b) of sub section 15. Moreover, it has been urged that in consequence, the final assessment order dated 31 October 2016 was beyond limitation in terms of Section 153(1) read with Section 153 (4). For the purposes of the present proceeding, we do not consider it necessary to delve into that aspect of the matter having regard to the reasons which have weighed us in the earlier part of this judgment.

32 On behalf of the Revenue, reliance has been placed on the decision of this Court in Commissioner of Income Tax, Shillong v Jai Prakash Singh38 ("Jai Prakash Singh"). That was a case where the assessee did not file a return for three assessment years and died in the meantime. His son who was one of the legal representatives filed returns upon which the assessing officer issued notices under Section 142 (1) and Section 143 (2). These were complied with and no objections were raised to the assessment proceedings. The assessment order mentioned the names of all the legal representatives and the

assessment was made in the status of an individual. In appeal, it was contended that the assessment proceedings were void as all the legal representatives were not given notice. In this backdrop, a two judge Bench of this Court held that the assessment proceedings were not null and void, and at the worst, that they were defective. In this context, reliance was placed on the decision of the Federal Court in Chatturam v CIT39 holding that the jurisdiction to assess and the liability to pay tax are not conditional on the validity of the notice : the liability to pay tax is founded in the charging sections and not in the machinery 38 (1996) 3 SCC 525 39 (1947) 15 ITR 302 (FC) provisions to determine the amount of tax. Reliance was also placed on the decision in Maharaja of Patiala v CIT40 ("Maharaja of Patiala"). That was a case where two notices were issued after the death of the assessee in his name, requiring him to make a return of income. The notices were served upon the successor Maharaja and the assessment order was passed describing the assessee as "His Highness...late Maharaja of Patiala". The successor appealed against the assessment contending that since the notices were sent in the name of the Maharaja of Patiala and not to him as the legal representative of the Maharaja of Patiala, the assessments were illegal. The Bombay High Court held that the successor Maharaja was a legal representative of the deceased and while it would have been better to so describe him in the notice, the notice was not bad merely because it

omitted to state that it was served in that capacity. Following these two decisions, this Court in Jai Prakash Singh held that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where the liability is created by a distinct substantive provision. The omission or defect may render the order irregular but not void or illegal. Jai Prakash Singh and the two decisions that it placed reliance upon were evidently based upon the specific facts. Jai Prakash Singh involved a situation where the return of income had been filed by one of the legal representatives to whom notices were issued under Section 142(1) and 143(2). No objection was raised by the legal representative who had filed the return that a notice should also to be served to other legal representatives of the deceased assessee. No 40 (1943) 11 ITR 202 (Bombay) objection was raised before the assessing officer. Similarly, the decision in Maharaja of Patiala was a case where the notice had been served on the legal representative, the successor Maharaja and the Bombay High Court held that it was not void merely because it omitted to state that it was served in that capacity.

33 In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in

> ***its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on 2 November 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment."***

6.6 Reading the aforesaid extract would indicate that the Supreme Court clearly held that the Assessing Officer though was informed of the Amalgamating Company having ceased to exist, issued notice, which was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation.

6.7 As far as the decision which is pressed into service in the case of ***Mahagun Realtors (P.) Ltd.*** (supra) by the counsel for the revenue, by interpreting the term 'amalgamation', facts in the case of ***Mahagun Realtors (P.) Ltd.*** (supra), indicate that the erstwhile company did not intimate of the amalgamation or merger to the authorities and filed a return of income on 30.06.2006 in the name of the erstwhile company though it was amalgamated with MIPL with effect from 01.04.2006. That is evident from paras 34 and 41, 42 of the decision in case of ***Mahagun Realtors (P.) Ltd.*** (supra) which read as under:

> *"34. Firstly, in both the relied upon cases, the assessee had duly informed the authorities about the merger of companies and yet the assessment order was passed in the name of amalgamating/non-existent company. However, in the present case, for AY 2006-07, there was no intimation by the assessee regarding amalgamation of the company. The ROI for the AY 2006-07 first*

filed by the respondent on 30.06.2006 was in the name of MRPL. MRPL amalgamated with MIPL on 11.05.2007, w.e.f. 01.04.2006. In the present case, the proceedings against MRPL started in 27.08.2008- when search and seizure was first conducted on the Mahagun group of companies. Notices under Section 153A and Section 143(2) were issued in the name MRPL and the representative from MRPL corresponded with the department in the name of MRPL. On 28.05.2010, the assessee filed its ROI in the name of MRPL, and in the 'Business Reorganization' column of the form mentioned 'not applicable' in amalgamation section. Though the respondent contends that they had intimated the authorities by letter dated 22.07.2010, it was for AY 2007-2008 and not for AY 2006-07. For the AY 2007- 08 to 2008-2009, separate proceedings under Section 153A were initiated against MIPL and the proceedings against MRPL for these two assessment years were quashed by the Additional CIT by order dated 30.11.2010 as the amalgamation was disclosed. In addition, in the present case the assessment order dated 11.08.2011 mentions the name of both the amalgamating (MRPL) and amalgamated (MIPL) companies.

...

41 In the light of the facts, what is overwhelmingly evident- is that the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place, as well as

statements were recorded by the revenue of the directors and managing director of the group. A return was filed, pursuant to notice, which suppressed the fact of amalgamation; on the contrary, the return was of MRPL. Though that entity ceased to be in existence, in law, yet, appeals were filed on its behalf before the CIT, and a cross appeal was filed before ITAT. Even the affidavit before this court is on behalf of the director of MRPL. Furthermore, the assessment order painstakingly attributes specific amounts surrendered by MRPL, and after considering the special auditor's report, brings specific amounts to tax, in the search assessment order. That order is no doubt expressed to be of MRPL (as the assessee) - but represented by the transferee, MIPL. All these clearly indicate that the order adopted a particular method of expressing the tax liability. The AO, on the other hand, had the option of making a common order, with MIPL as the assessee, but containing separate parts, relating to the different transferor companies (Mahagun Developers Ltd., Mahagun Realtors Pvt. Ltd., Universal Advertising Pvt. Ltd., ADR Home Décor Pvt. Ltd.). The mere choice of the AO in issuing a separate order in respect of MRPL, in these circumstances, cannot nullify it. Right from the time it was issued, and at all stages of various proceedings, the parties concerned (i.e., MIPL) treated it to be in respect of the transferee company (MIPL) by virtue of the amalgamation order – and Section 394 (2). Furthermore, it would be anybody's guess, if

any refund were due, as to whether MIPL would then say that it is not entitled to it, because the refund order would be issued in favour of a non-existing company (MRPL). Having regard to all these reasons, this court is of the opinion that in the facts of this case, the conduct of the assessee, commencing from the date the search took place, and before all forums, reflects that it consistently held itself out as the assessee. The approach and order of the AO is, in this court's opinion in consonance with the decision in Marshall & Sons (supra), which had held that:

> *"an assessment can always be made and is supposed to be made on the Transferee Company taking into account the income of both the Transferor and Transferee Company."*

42. Before concluding, this Court notes and holds that whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case."

6.8 Even in the case of ***Kunvarji Fincorp Private Limited*** (supra), the Division Bench of this Court has culled out the distinction on facts

in the case of ***Mahagun Realtors (P.) Ltd.*** (supra). Para 13 thereof reads as under:

> *"13. The Supreme Court in the case of Principal Commissioner of Income-tax Vs. Mahagun Realtors (P.) Ltd. was considering the case for the A.Y.2006-07, where there was no intimation regarding amalgamation of the company. The return of income was filed by the assessee on 30.06.2006 in the name of MRPL and MRPL amalgamated with MIPL on 11.05.2007, w.e.f. 01.04.2006. The proceedings against MRPL stated in 27.08.2008 – when search and seizure was first conducted on assessee group of companies. Notices under Section 153A and Section 143(2) were issued in the name of MRPL and the representative from MRPL corresponded with the revenue in the name of MRPL. The assessee filed its return of income in the name of MRPL in May, 2010 and in the 'Business Reorganization' column of the form mentioned 'not applicable' in amalgamation section. It had contended that the intimation was sent to the revenue on 22.07.2010. The same was for the A.Y.2007-08 and not for the A.Y.2006- 07. The separate proceedings under Section 153A were initiated against MIPL for A.Y.2007-8 to 2008-09 and the proceedings against MRPL for those two assessment years were quashed by the Commissioner as the amalgamation was disclosed. Since the amalgamation was known to the assessee, even at the stage when the search and seizure operations have taken place and*

statements were recorded by the revenue of the Directors and Managing Director of the group. A return was filed, pursuant to notice, which also suppressed the factum of amalgamation; on the contrary, the return was filed by MRPL – the company which has ceased to be in existence, and yet, the appeals were filed on behalf of it before the Commissioner and a cross appeal was filed before the Tribunal. An affidavit before the court was also on behalf of the Director of MRPL and the assessment order had attributed the specific amounts surrendered by MRPL and that too, after considering the special auditor's report, bringing specific amounts to tax in the search assessment order."

6.9 In the subsequent decision in the case of ***Adani Wilmar Ltd.*** (supra) and ***Inox Wind Energy Ltd.*** (supra), the Division Bench on facts distinguished the decision of the Supreme Court in the case of ***Mahagun Realtors (P.) Ltd.*** (supra). Paras 7, 8, 9, 19, 19.1, 19.2, 20 to 20.4 read as under:

"7. It appears from the chronology of events that from 04.02.1987, GFL Limited was incorporated in the Companies Act and Inox Renewables Limited was incorporated as

public limited company on 11.10.2010. The petitioner-Inox Wind Energy Limited ('the petitioner company" for short) was incorporated on 06.03.2020 as wholly owned subsidiary of GFL Limited on 06.03.2020.

8. The return of income was filed on Inox Renewables Limited for Assessment Year 2018-19 on 30.11.2018 declaring total income at nil. Notice under section 143(2) was issued on 23.09.2019 selecting the case for scrutiny. The composite scheme of arrangement between the Inox Renewables Limited, GFL Limited and the petitioner company was approved by the National Company Law Tribunal, Ahmedabad (NCLT). The scheme came under operation on 09.02.2021 with effect from the appointed date of 01.04.2020 for Part II of the Scheme (Merger of GFL Renewables Limited into GFL Limited). Communications addressed to Inox Renewables were responded by the petitioner after 09.02.2021. On 10.03.2021 an email was addressed to the Jurisdictional Assessing Officer informing the fact of scheme of arrangement and the merger of Inox Renewables Limited into the petitioner company and shared a copy of the order passed by NCLT, where the petitioner company also informed the respondent about the sanction of composite scheme of arrangement on replies dated 31.08.2021 and 10.09.2021.

9. The respondents since continued to issue notice in the name of erstwhile company, which was not in existence with effect from 01.04.2020, the grievance is made by the

petitioner.

...

...

19. The decision of the Apex Court in the case of ***Principal Commissioner of Income-tax vs. Mahagun Realtors (P.) Ltd., [2022] 137 taxmann. Com 91 (SC),*** *requires serious consideration at this stage. It was a case where no indication about amalgamation was given by the assessee during search operations and return filed pursuant to notice issued under section 153A suppressed the fact of amalgamation. Since the conduct of the assessee, commencing from the date of search and before all forums reflected that it consistently held itself as assessee, assessment order passed in the name of the assessee was valid. The assessee company MRPL was amalgamated with MIPL with effect from 01.04.2006 vide order of the High Court. Post amalgamation, search was conducted at premises of assessee-amalgamating company and discrepancies were noticed in the books of accounts. The Assessing Officer issued notice under section 153A in the name of amalgamating company i.e. MRPL, which filed return of income for the Assessment Year 2006-07 and the assessee company filed return in the name of MRPL. It appears that the Assessing Officer completed the assessment and made an addition. The Tribunal quashed the said order. The MRPL was not in existence when the assessment order was passed. The High Court upheld the said order.*

19.1 It was noted by the Apex Court that no indication about amalgamation was given by assessee during search operations and return filed pursuant to notice issued under section 153A suppressed fact of amalgamation. The Court held that even though the assessee company ceased to exist, the appeals were filed on behalf of the assessee. Since the conduct of the assessee, commencing from the date of search and before all forums reflected that it consistently held itself as assessee, assessment order passed in the name of the assessee was valid. The corporate death of an entity upon amalgamation per se invalidate assessment order passed in name of amalgamating company cannot be determined on a bare application of section 481 of the Companies Act, 1956, but would depend upon terms of amalgamation and facts of each case. The matter was remanded back to the Tribunal for decision afresh.

19.2 Relevant paragraphs are reproduced profitably as under:

> *"31. In Maruti Suzuki (supra), the scheme of amalgamation was approved on 29.01.2013 w.e.f. 01.04.2012, the same was intimated to the AO on 02.04.2013, and the notice under Section 143(2) for AY 2012-13 was issued to amalgamating company on 26.09.2013. This court in facts and circumstances observed the following:*

"35. In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non- existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.

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39. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment on 2 November 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment.

40. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."

32. The court, undoubtedly noticed Saraswati Syndicate. Further, the judgment in Spice (supra) and other line of decisions, culminating in this court's order, approving those judgments, was also noticed. Yet, the legislative change, by way of introduction of Section 2 (1A), defining "amalgamation" was not taken into account. Further, the tax treatment in the various provisions of the Act were not brought to the notice of this court, in the previous decisions.

33. There is no doubt that MRPL amalgamated with MIPL and ceased to exist thereafter; this is an established fact and not in contention. The respondent has relied upon Spice and

> *Maruti Suzuki (supra) to contend that the notice issued in the name of the amalgamating company is void and illegal. The facts of present case, however, can be distinguished from the facts in Spice and Maruti Suzuki on the following bases.*
>
> *xxx xxx xxx*
>
> *42. Before concluding, this Court notes and holds that whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case.*

20. The Apex Court here looked beyond the construction "corporate entity", which otherwise brings to an end or terminates any assessment proceedings equating the same with the civil law and the procedure where upon amalgamation, the cause of action or the complaint does not per se cease, depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and Courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have developed or upon whom the liability in the event it is adjudicated, would fall.

20.1 While distinguishing the decision of

Maruti Suzuki India Ltd. *(supra), the Court notices that the scheme of amalgamation was approved on 29.01.2013 with effect from 01.04.2012 and the same was intimated to the Assessing Officer on 02.04.2013 i.e. on the very next day and the notice under section 143(2) for the Assessment Year 2012-13 was issued to amalgamating company on 26.09.2013. Thus, the notice was issued to non-existing company and the assessment order was issued against the company, which was held to be substantive illegality and not procedural violation of the nature adverted to in section 292B.*

20.2 In ***Maruti Suzuki India Ltd.*** *(supra), the Court had further noticed that the Assessing Officer was informed of the amalgamating company having ceased to exist as a result of approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The legal principle that had been applied was that the amalgamating entity ceases to exist against the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against the law. While so doing the Court had also relied on the decision of* ***Spice Entertainment Ltd.*** *(supra) and the Court held that there was no reason as to why to take a different view. There is a value which the Court must abide by in promoting the interest of certainty in tax litigation. The view taken by the Apex Court in relation to the respondent for Assessment Year 2011-12 was found to be necessary to be adopted in respect of the appeal, as otherwise, the same would*

result into uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.

20.3 Distinguishing the facts from the case of ***Spice Entertainment Ltd.*** *(supra) and* ***Maruti Suzuki India Ltd.*** *(supra), the Court held otherwise. In both the cases the assessee had duly informed the authorities about the merger of companies and, yet the assessment order was passed against the amalgamating or non-existing company. In* ***Mahagun Realtors (P.) Ltd.****(supra), there was no intimation by the assessee regarding the amalgamation of the company. The return of income for the Assessment Years 2006-07 was filed by the assessee on 30.06.2006 in the name of MRPL. The MRPL amalgamated with MIPL on 11.05.2007 with effect from 01.04.2006. The proceedings against MRPL started on 27.08.2008 when search and seizure was first conducted on the Mahagun group of companies. Notices under section 153A and section 143(2) were issued in the name of MRPL and the representative from MRPL corresponded with the department in the name of MRPL. The assessee filed its return of income in the name of MRPL, and in the 'business Reorganization' column of the form mentioned 'not applicable' in amalgamation section. The intimation to the departmental authorities was for Assessment Year 2007-08*

and not for Assessment Year 2006-07. For Assessment Years 2007-08 to 2008-09, a separate proceedings against MIPL and the proceedings against MRPL for these two assessment years were quashed by the Additional CIT by order dated 30.11.2010, as the amalgamation was disclosed.

20.4 What overwhelmingly evident was that the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place as well as statements were recorded by the Revenue of the Directors and Managing Director of the group. A return was filed, pursuant to the notice, which suppressed the fact of amalgamation and, in fact, the return was filed by MRPL though the entity was ceased to exist and yet the appeals were filed before the CIT and the Tribunal. Even the affidavit was filed before this Court on behalf of the Director of MRPL. The assessment order attributes specific amounts surrendered by MRPL and after considering the special auditor's report, brings specific amounts to tax in the search assessment order."

6.10 As rightly pointed out by Ms.Nupur Shah learned advocate for the petitioner, there are several distinctive features which suggest that as held by the Division Benches of this Court in the case of ***Inox Wind Energy Ltd.*** (supra)

and ***Adani Wilmar Ltd.*** (supra), the decision in the case of ***Mahagun Realtors (P.) Ltd.*** (supra) on facts will not apply as the comparison of facts in the case of ***Mahagun Realtors (P.) Ltd.*** (supra) viz-a-viz the petitioner, would indicate that in the case before the Supreme Court the search operations took place post the sanction of amalgamation, the amalgamating company i.e. MRPL. For the purposes of this judgement, comparison of facts in case of ***Mahagun Realtors (P.) Ltd.*** (supra) vs. petitioner Anokhi Realty Pvt. Ltd. would be relevant. The said comparison is as under:

Sr. No.	**Facts in case of Mahagun Realtors Pvt. Ltd.**	**Facts in the case of the petitioner Anokhi Realty Pvt. Ltd.**
1	When search operation took place post the sanction of amalgamation, the	The petitioner informed about the amalgamation vide letter dated 30.01.2020 filed on

	amalgamating company i.e. Mahagun Realtors Pvt. Ltd. did not inform Tax Authority about the amalgamation.	15.06.2021 and also requested for cancellation of PAN.
2	The return of income for tax year 2005-06 was filed in the name and PAN of the amalgamating company i.e. Mahagun Realtors Pvt. Ltd.	The order of amalgamation was passed on 13.11.2019 approving the scheme w.e.f 01.04.2019, so no return has been filed by the amalgamated company i.e. Satyasarthi Estate Organizers Pvt. Ltd. post merger i.e. for AY 2020-21.
3	While the amalgamating company i.e. Mahagun Realtors Pvt. Ltd. did intimate Tax Authority about amalgamation, it was for subsequent tax years and not for the tax year under	The petitioner informed about the amalgamation vide letter dated 30.01.2020 filed on 15.06.2021 and also requested for cancellation of PAN. The company had also filed a reply dated

	reference.	05.07.2021 challenging the validity of notice being issued on a non-existing company.
4	The return of income filed by the amalgamating company i.e. Mahagun Realtors Pvt. Ltd. did not disclose the fact of amalgamation despite the presence of such specific reporting requirement in return of income	The amalgamated company Anokhi Realty Pvt. Ltd. in the audit report filed for AY 2020-21 had made specific remarks related to merger in note no. 1 and 20 of audit report
5	The amalgamating company i.e. Mahagun Realtors Pvt. Ltd. participated fully in the assessment proceedings without raising any objection on the ground of amalgamation	The company did not participate in the re-assessment proceedings, rather the company had filed a reply dated 05.07.2021 challenging the validity of notice being issued on a non-existing company.
6	Assessment order was	No final assessment

	issued in the name of the amalgamating company i.e. Mahagun Realtors Pvt. Ltd. represented by amalgamated company. The amalgamating company i.e. Mahagun Realtors Pvt. Ltd. filed appeals also in similar fashion before FAA and Tribunal.	orders have been passed in name of the amalgamated company Satyasarthi Estate Organizers Pvt. Ltd. post merger.
7	It was for the first time before Tribunal that the amalgamating company i.e. Mahagun Realtors Pvt. Ltd. raised objection on validity of assessment in the name of the Taxpayer in view of amalgamation.	The company from the very first has raised objection on validity of the assessment i.e. has challenged the validity of notice issued u/s. 148 of the Act.
8	Affidavit filed before the SC also shows that affidavit was signed by directors of the	The amalgamating company Anokhi Realty Pvt. Ltd. has filed petition before the Hon’ble

	amalgamating company i.e. Mahagun Realtors Pvt. Ltd.	Gujarat High court on behalf of the amalgamated company duly signed by the director of amalgamating company Anokhi Realty Pvt. Ltd.

7. In case of ***Marshall Sons & Co. (India) Ltd.*** (supra), the Hon'ble Supreme Court has held as under:

> *"12. Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide, viz., 1-1-1982. It is true that while sanctioning the scheme, it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case. If the Court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer. But where the Court does not prescribe any specific date but merely sanctions the scheme presented to it - as has happened in this case - it should follow that the date of*

amalgamation/date of transfer is the date specified in the scheme as 'the transfer date'. It cannot be otherwise. It must be remembered that before applying to the Court under section 391(1), a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the Court may take some time; indeed, they are bound to take some time because several steps provided by sections 391 to 394A and the relevant Rules have to be followed and complied with. During the period, the proceedings are pending before the Court, both the amalgamating units, i.e., the transferor company and transferee company may carry on business, as has happened in this case but normally provision is made for this aspect also in the scheme of amalgamation. In the scheme before us, clause 6(b) does expressly provide that with effect from the transfer date, the transferor company (subsidiary company) shall be deemed to have carried on the business for and on behalf of the transferee company (holding company) with all attendant consequences. It is equally relevant to notice that the Courts have not only sanctioned the scheme in this case but have also not specified any other date as the date of transfer/amalgamation. In such a situation, it would not be reasonable to say that the scheme of amalgamation takes effect on and

from the date of the order sanctioning the scheme. We are, therefore, of the opinion that the notices issued by the ITO (impugned in the writ petition) were not warranted in law. The business carried on by the transferor company (subsidiary company) should be deemed to have been carried on for and on behalf of the transferee company. This is the necessary and the logical consequence of the Court sanctioning the scheme of amalgamation as presented to it. The order of the Court sanctioning the scheme, the filing of the certified copies of the orders of the Court before the Registrar of Companies, the allotment of shares, etc., may have all taken place subsequent to the date of amalgamation/transfer, yet the date of amalgamation in the circumstances of this case would be 1-1-1982. This is also the ratio of the decision of the Privy Council in Raghubar Dayal v. Bank of Upper India Ltd. AIR 1919 PC 9.

13. The counsel for the revenue contended that if the aforesaid view is adopted, then several complications will ensue in case the Court refuses to sanction the scheme of amalgamation. We do not see any basis for this apprehension. Firstly, an assessment can always be made and is supposed to be made on the transferee company taking into account the income of both the transferor

> *and transferee companies. Secondly, and probably the more advisable course from the point of view of the revenue would be to make one assessment on the transferee company taking into account the income of both the transferor and transferee companies and also to make separate protective assessments on both the transferor and transferee companies separately. There may be a certain practical difficulty in adopting this course inasmuch as separate balance sheets may not be available of the transferor and transferee companies. But that may not be insuperable problem inasmuch as assessment can always be made, on the available material, even without a balance sheet. In certain cases, best-judgment assessment may also be resorted to. Be that as it may, we need not pursue this line of enquiry because it does not arise for consideration in these cases directly."*

8. In a recent decision, the coordinate bench of this Court in case of ***Roquette India Private Limited Vs. Assistant Commissioner of Income Tax Circle 3(1)(1), Ahmedabad*** rendered in ***SCA No. 5719 of 2022 dated***

10.07.2023, disqualified the ratio laid down by the Hon'ble Apex Court in case of ***PCIT vs. Mahagun Realtors Pvt. Ltd. (2022) 137 taxmann.com 91 (SC)*** and it is held as under:

> *"[7] On perusal of the documents placed on record and after considering the submissions of both the sides, it is clear that, after the amalgamation of the erstwhile Rouquette India Private Ltd. (PAN: AADCR6343R) with Roquette Riddhi Siddhi Private Ltd., the petitioner informed the revenue vide communication dated 01.07.2014. Thereafter, the name of Roquette Riddhi Siddhi Private Ltd. was changed to Roquette India Private Limited (PAN: AAFCR2758G). However, the revenue issued notice under Section 148 on 25.03.2021 without considering the fact that the name of Roquette Riddhi Siddhi Private Limited was changed to Roquette India Private Limited (PAN: AAFCR2758G). Petitioner gave reply to the said notice vide communication dated 08.04.2021.*
>
> *The respondent, however, issued notice under Section 142(1) of the Income Tax Act, 1961 on 10.11.2021 and the petitioner replied vide communication dated 15.11.2021. Against, another notice under Section 142(1) of the Income Tax Act, 1961 on 21.01.2022, the petitioner replied to the same vide communication dated 04.02.2022. The Respondent Authority without considering the replies, issued notice under Section 142(1) of the Income Tax Act, 1961 on 28.01.2022 and notice under Section 142(1) of the Income Tax*

Act, 1961 on 12.03.2022, against which, petitioner gave replies on 04.02.2022 and 16.03.2022 respectively.

[8] The notice dated 25.03.2021 was issued in the name of Company, which is no longer in existence. The clarification that new amalgamated Company Roquette India Private Limited (PAN: AAFCR2758G) had invested in time deposits from BNP Paribas during the relevant Assessment Year 2017-18. It was also pointed out that the said error on the part of BNP Paribas in mentioning that the investment has been done by the old amalgamating company i.e. Roquette India Private Limited (PAN: AADCR6343R). The said error was rectified by BNP Paribas and BNP Paribas has subsequently revised their SFT return. The petitioner has placed on record its Annual Tax Statement filed under the Income Tax Act, 1961 for the Assessment Year 2017-18, wherein PAN is shown as AAFCR2758G.

[9] The issue involved in the present petition is no more res integra in view of the reported decision in the case of ***Neo Structo Construction (supra).*** *The similar question arose before this Court and the Co-ordinate Bench of this Court has observed in paras 7 & 8 as under:-*

> *"7. Learned advocate Mr. Shah relied upon the judgement of Hon'ble Supreme Court in case of Principal Commissioner of Income Tax vs. Maruti Suzuki India Ltd (107 Taxmann. Com. 375) in which the Supreme Court has held as under:*
>
> > *"33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional*

notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on 2 November 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment."

8. He further placed reliance on the decision of this Court in case of Gayatri Microns Ltd vs. Assistant Commissioner of Income Tax reported in [2020] 114 Taxmann.com 318 in which this Court has held as under:
"9. The controversy in the present petition, is no longer res integra. The Apex Court in the case of Principal Commissioner of Income Tax vs. Maruti Suzuki India Limited (supra), in paragraph 33, has categorically held that if the company has ceased to exist as a result of the approved scheme of amalgamation then in that case, the jurisdictional notice issued in its name would be fundamentally illegal and without jurisdiction. It is also held that upon the amalgamating entity ceasing to exist, it cannot be regarded as a person under subsection (31) of section 2 of the Act; against whom assessment proceedings can be initiated. The Apex Court has further held that participation by the amalgamated company in the proceedings would be of no effect as there is no estoppel against law.

> *10. Similarly, this court, in the judgment in the case of Dharamnath Shares and Services (P) Ltd. (supra) while referring to its earlier decision in the case of Khurana Engineering Limited (supra) held that once the assessee company gets amalgamated with the transferee company, its independent existence does not survive and therefore it would no longer be amenable to the assessment proceedings. Thus, it is well settled proposition of law that upon its amalgamation the transferor company ceases to exist and becomes extinct, and it would no longer be amenable to the assessment proceedings considering the fact that the extinct entity would not be covered within the ambit of the provisions of the Act.*
>
> *11. Accordingly, in view of the aforesaid concluded proposition of law; which applies on all fours to the facts of the present case, the notice dated 25th March, 2019 issued by the respondent under the provisions of section 148 of the Act for the assessment year 2012-13, being without jurisdiction, is not sustainable."*

[10] In the case of ***Adani Wilmar Ltd. (supra),*** *this Court has also referred the decision of the Hon'ble Apex Court in the case of* ***Principal Commissioner of Income Tax Vs. Maruti Suzuki Ltd.,*** *wherein the Hon'ble Apex Court has observed in paras 5 & 6 as under:-*

> *"5. It is urged before this Court that this group of other such matters in relation to the another company – Kunvarji Fincorp Pvt. Ltd. for other assessment years have been decided in Special Civil Application No.935 of 2022 and allied matters on 06.02.2023 and on the reasoning mutatis mutandis applied to case of the present matter, where the Court has referred order passed in Special Civil Application No.903 of 2022 dated 16.01.2023 and reproduced relevant portion as under:-*

"10. Noticing thus the submission of both the sides and the materials on record, it is not requiring much of debate that in the instant case, this Court on 05.08.2016 after following the requisite procedure which also includes giving of notice to the Income-tax Department, has chosen to decide the plea of amalgamation and approved the Scheme of Amalgamation in the interest of shareholders, creditors and has also taken note of the public interest. This decision had been intimated by the present petitioner and reply to the notice under Section142(1) of the Incometax Act for the A.Y.2016-17, not only, it had specified that it has required the two companies i.e.M/s. Kaizen Stocktrade Pvt. Ltd. [PAN: AADCK0048A] and Kaizen Finstock Pvt. Ltd. [PAN: AAECK6956E] and this communication addressed to Circle 2(1)(2) provides for order of the Court dated 31 st August, 2016.

11. In absence of any particular format for intimating the authority concerned, this intimation on the part of the petitioner is sufficient intimation to the department. We need to make also a note of the fact that the notice, which is impugned in the present petition is issued by the Officer Circle 2(1)(1).

12. The Apex court in the case of Principal CIT Vs. Maruti Suzuki Ltd. (Supra) had noted that the Assessing Officer was informed of the amalgamating company having ceased to exist as a result of the approved Scheme of Amalgamation. The Court has held that the legal principle provides that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. This Court in the case of Gayatri Microns Ltd. Vs. Assistant Commissioner of Income-tax was considering the the case of issuance of notice under Section-148 to one of the three transferee companies for reopening the assessment. The Court considered whether the transferor company had ceased to exist as a result of the approved Scheme of Amalgamation. Answering that in the affirmation has held that in such case, the notice issued under Section-148 in its name would be fundamentally illegal and without jurisdiction.

> *8. Concededly, in the present case the notice under section 148 of the Act has been issued to Gayatri Integrated Services Private Limited which, as aforesaid, had long back got amalgamated with the petitioner vide order dated 18th June, 2015 passed by this court and thus, it had ceased to have*

its own existence so as to render it amenable for the reassessment proceedings under the provisions of section 147 of the Act. Moreover, the respondent and the department were duly informed by the petitioner about the amalgamation and despite the said factum having been brought to the notice of the respondent, statutory notice under section 148 came to be issued to Gayatri Integrated Services Private Limited for reopening the assessment on the ground that the respondent has reason to believe that income chargeable to tax for the assessment year 2012-13 has escaped the assessment within the meaning of section 147 of the Act.

9. The controversy in the present petition, is no longer res integra. The Apex Court in the case of Principal Commissioner of Income Tax vs. Maruti Suzuki India Limited (supra), in paragraph 33, has categorically held that if the company has ceased to exist as a result of the approved scheme of amalgamation then in that case, the jurisdictional notice issued in its name would be fundamentally illegal and without jurisdiction. It is also held that upon the amalgamating entity ceasing to exist, it cannot be regarded as a person under subsection (31) of section 2 of the Act; against whom assessment proceedings can be initiated. The Apex Court has further held that participation by the amalgamated company in the proceedings would be of no effect as there is no estoppel against law.

10. Similarly, this court, in the judgment in the case of Dharamnath Shares and Services (P) Ltd. (supra) while referring to its earlier decision in the case of Khurana Engineering Limited (supra) held that once the assessee company gets amalgamated with the transferee company, its independent existence does not survive and therefore it would no longer be amenable to the assessment proceedings. Thus, it is well settled proposition of law that upon its amalgamation the transferor company ceases to exist and becomes extinct, and it would no longer be amenable to the assessment proceedings considering the fact that the extinct entity would not be covered within the ambit of the

provisions of the Act.

13. The Supreme Court in the case of Principal Commissioner of Income-tax Vs. Mahagun Realtors (P.) Ltd. was considering the case for the A.Y.2006-07, where there was no intimation regarding amalgamation of the company. The return of income was filed by the assessee on 30.06.2006 in the name of MRPL and MRPL amalgamated with MIPL on 11.05.2007, w.e.f. 01.04.2006. The proceedings against MRPL stated in 27.08.2008 – when search and seizure was first conducted on assessee group of companies. Notices under Section 153A and Section 143(2) were issued in the name of MRPL and the representative from MRPL corresponded with the revenue in the name of MRPL. The assessee filed its return of income in the name of MRPL in May, 2010 and in the 'Business Reorganization' column of the form mentioned 'not applicable' in amalgamation section. It had contended that the intimation was sent to the revenue on 22.07.2010. The same was for the A.Y.2007-08 and not for the A.Y.2006- 07. The separate proceedings under Section 153A were initiated against MIPL for A.Y.2007-8 to 2008-09 and the proceedings against MRPL for those two assessment years were quashed by the Commissioner as the amalgamation was disclosed.

Since the amalgamation was known to the assessee, even at the stage when the search and seizure operations have taken place and statements were recorded by the revenue of the Directors and Managing Director of the group. A return was filed, pursuant to notice, which also suppressed the factum of amalgamation; on the contrary, the return was filed by MRPL – the company which has ceased to be in existence, and yet, the appeals were filed on behalf of it before the Commissioner and a cross appeal was filed before the Tribunal. An affidavit before the court was also on behalf of the Director of MRPL and the assessment order had attributed the specific amounts surrendered by MRPL and that too, after considering the special auditor's report, bringing specific amounts to tax in the search assessment order.

14. All these according to the Court indicated that the order adopted a particular method of expressing the liability and it opined that the conduct of the assessee commencing from the date the search took place, and before all forums, reflected that it consistently held itself out as the assessee. It was held that the

corporate death of an entity upon amalgamation per-se invalidate the assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, but, would depend on the terms of the amalgamation and the facts of each case. In light of this, the order of the High Court was not sustained and as the appeal of the revenue against the order of the Commissioner was not heard on merits, the Court had restored the matter on the file of Tribunal. While so holding the Court had taken note of decision of Principal CIT Vs. Maruti Suzuki Ltd. to hold thus:-

> *"31. In Maruti Suzuki (supra), the scheme of amalgamation was approved on 29.01.2013 w.e.f. 01.04.2012, the same was intimated to the AO on 02.04.2013, and the notice under Section 143(2) for AY 2012-13 was issued to amalgamating company on 26.09.2013. This court in facts and circumstances observed the following:*
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> > *"35. In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non- existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.*
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> *** **** **** ****
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> > *39. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the*

Revenue in Spice Entertainment on 2 November 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment.

40. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."

32. The court, undoubtedly noticed Saraswati Syndicate Further, the judgment in Spice (supra) and other line of decisions, culminating in this court's order, approving those judgments, was also noticed. Yet, the legislative change, by way of introduction of Section 2(1A), defining "amalgamation" was not taken into account. Further, the tax treatment in the various provisions of the Act were not brought to the notice of this court, in the previous decisions.

33. There is no doubt that MRPL amalgamated with MIPL and ceased to exist thereafter; this is an established fact and not in contention. The respondent has relied upon Spice and Maruti Suzuki (supra) to contend that the notice issued in the name of the amalgamating company is void and illegal. The facts of present case, however, can be distinguished from the facts in Spice and Maruti Suzuki on the following bases.

15. It is to be noticed that the Court specifically had held that the MRPL amalgamated with MIPL and ceased to exist thereafter. The contention of the respondent that the notice issued in the name of amalgamating company being void and illegal relying on the Spice and Maruti Suzuki (supra) was not sustained only on the robot facts which had been presented before this Court holding that can be distinguished from the facts existed in those matters.

16. According to this Court, the facts applicable to the present case are those which existed in case of Maruti Suzuki and not as were before the Apex Court in case of Mahagun Realtors (P.) Ltd. (Supra). Here of-course, the intimation was given in reply to the notice under Section142 in the month of March, 2018 by specifically intimating to the concerned officer of the factum of amalgamation by the petitioner and of its having acquired both the companies viz.Kaizen Stocktrade Pvt. Ltd. and Kaizen Finstock Pvt. Ltd. Again, it is the very officer who after three years of such amalgamation has issued notice which is impugned in the name of that company, which no longer existed on 30.03.2021 for the A.Y. 2016-17 and therefore, the grievance on the part of the petitioner requires to be sustained and the action of the respondent authority warrants interference.

17. We are conscious of the fact that the Income-tax Department had already been issued the notice by this Court at the time of considering the request for approving the scheme of amalgamation, however, that would in no manner absolve any party of its obligation to intimate the final order of amalgamation, as is otherwise expected under the law. The statute since has not provided any format nor has any specified format otherwise prescribed this intimation in response to the notice under Section142 of the Income Tax Act should be construed as a sufficient compliance and hence, all the petitions deserve to be allowed, quashing and setting aside the show cause notices with consequential reliefs.

This of-course in no manner preclude the respondent to initiate the action against

> *the present petitioner in accordance with law. The petition stands disposed of in above terms."*
>
> *6. The Court has already decided issue involved in this petition, in similar facts in Special Civil Application No.935 of 2022 and allied matters. Thus, the petition here also is allowed. The actions of the respondent – authority regarding issuance of notice under Section-148 deserves to be interfered with. The show-cause notices issued by the respondents are quashed and set aside with consequential reliefs. This could not in any manner preclude the respondents to initiate the action against the present petitioners in accordance with law."*

[11] Thus, the legal principle is clear that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Hence, we find no reason to take different view. Keeping in view the above observations made in the decision of the Hon'ble Apex Court as well as of this Court, this petition deserves to be allowed.

[12] In the result, this petition is ***allowed*** *and the impugned notice dated 25.03.2021 issued by the respondent under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2017-18, is hereby quashed and set aside. Rule is made absolute to the aforesaid extent."*

9. In light of the above referred various judgements and the case law cited by the learned counsel for the petitioner in the case of ***Maruti Suzuki India Limited*** (supra), ***Adani Wilmar Ltd.*** (supra) and ***Inox Wind Energy Ltd.*** (supra), the

ratio laid down in those judgements would squarely apply and since the notices for the assessment years 2014-15 to assessment years 2017-18 have been issued to the non-existing entity viz. Satyasarthi Estate Organisers Private Limited, such notices are quashed and set aside.

10. Petition is allowed accordingly.

(BIREN VAISHNAV, J)

(D. M. DESAI,J)

ANKIT SHAH