IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'I' NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT AND SHRI DR. BRR KUMAR, ACCOUNTANT MEMBER

ITA No.828/Del/2021
Assessment Year: 2016-17

Boeing India Pvt. Ltd., (Successor to Boeing International Corporation India Pvt. Ltd., 3rd Floor, DLF Centre, Sansad Marg, New Delhi-1100 01	**Vs.**	ACIT, Central Circle -4(2), New Delhi
PAN :AAHCB1218P		
(Appellant)		**(Respondent)**

Assessee by	S/Shri Sachit Jolly & Mrs. Disha Jham, Adv.
Department by	Shri Rajesh Kumar, CIT(DR)

Date of hearing	08.03.2024
Date of pronouncement	27 .03.2024

ORDER

PER SAKTIJIT DEY**: VICE-PRESIDENT**

Captioned appeal has been filed by the assessee challenging the final assessment order dated 30.03.2021 passed for the assessment

year 2016-17 in pursuance to directions of learned Dispute Resolution Panel (DRP).

2. In ground nos. 1 and 2, assessee has called into question the validity of the impugned assessment order. It is the case of the assessee that the assessment order having been passed against a non-existent entity is invalid. Since, the aforesaid issue is a purely legal and jurisdictional issue going to the root of the matter, we deem it appropriate to address the issue at the very outset.

3. Shorn of unnecessary details, briefly, the facts are, the assessee earlier known as Boeing International Corporation India Ltd. is a resident corporate entity. For the assessment year under dispute, the assessee filed its return of income under Section 139(1) of the Act on 29.11.2016 declaring income of Rs.60,55,17,000. Subsequent to filing of return of income, Boeing International Corporation India Ltd. got merged with Boeing India Pvt. Ltd. as per the scheme of merger dated 27.02.2018 from the appointed date of Ist April 2017. The amalgamation of Boeing International Corporation India Ltd. with Boeing India Pvt. Ltd. was duly brought to the notice of the Assessing Officer vide letter dated 10.04.2018 with supporting evidences. Since,

in the year under consideration, the assessee had entered into international transactions with its Associated Enterprises (AEs), the Assessing Officer made a reference to the Transfer Pricing Officer (TPO) to determine the Arm's Length Price (ALP) of the international transactions. Vide order dated 31.10.2019, the TPO suggested adjustment of Rs.2,03,05,826 and accordingly sought enhancement of income to that extent. In terms with the order of the TPO, the Assessing Officer framed the draft assessment order on 21.12.2019. Against the draft assessment order, the assessee raised objections before learned DRP. However, learned DRP sustained the adjustment proposed by the TPO. In terms with the directions of learned DRP, the Assessing Officer passed the final assessment order, which is under challenge in the present appeal.

4. Before us, learned counsel appearing for the assessee submitted, though, the Assessing Officer was aware of the fact that the erstwhile company Boeing International Corporation India Ltd. had merged with Boeing India Pvt. Ltd., however, he has passed both the draft as well as the final assessment orders in the name of Boeing International Corporation India Ltd., which was a non-existent entity

as on the date of both draft as well as final assessment orders. Thus, he submitted the assessment order having been passed in the name of a non-existent entity is void ab initio, hence, deserves to be quashed. He submitted, while considering identical nature of dispute in assessee's case in assessment year 2015-16, the Tribunal, in ITA No.9765/Del/2019 dated 17.08.2020, having found that the draft assessment order has been passed in the name of a non-existent entity quashed the assessment order. Further, in support of his contention, learned counsel strongly relied upon the following decisions:

i) PCIT vs. Maruti Suzuki India Ltd. (2019) – 416 ITR 613 (SC);
ii) CIT vs. Sony Mobile Communications India Pvt. Ltd. – ITA No.115/2019 judgment dated 02.02.2023 (Delhi High Court).

5. Per contra, learned Departmental Representative submitted, the assessee did inform the fact of amalgamation/merger of the erstwhile company with the successor company to the Assessing Officer. However, he submitted, since, the assessee had filed the return of income in the name of the erstwhile company, the name of the erstwhile company was mentioned in the draft assessment order along with the name of the successor company. Explaining further, he submitted that on filing of return of income, proceedings in ITBA

system gets triggered. Therefore, the name of the assessee appearing in the return of income gets reflected in the draft and final assessment orders. He submitted, merely because the name of the erstwhile company is mentioned in the draft and final assessment orders, that by itself would not make the assessment order invalid, as, it is a mere procedural irregularity. In any case of the matter, he submitted, in the draft assessment order, the Assessing Officer has mentioned the name of the successor company as well. He submitted, though, in the final assessment order, the Assessing Officer has not mentioned the name of the successor company, however, non-mentioning of the name of the successor company, is not fatal to the assessment order as the Assessing Officer has passed the final assessment order in terms with the directions of the DRP, which is in the correct name and forms part of the final assessment order. He submitted, the Tribunal's order in case of the assessee for assessment year 2015-16 would not be applicable as in the said assessment year, the assessee had challenged the validity of the draft assessment order before learned DRP. Whereas, it is not the case in the impugned assessment year. He submitted, in case of PCIT vs. Mahagun Realtors Realer Pvt. Ltd.

(2022) scc.online.sc 407, the Hon'ble Supreme Court while considering a similar issue has held that in case the assessment order mentions the names of both the amalgamating company and the amalgamated company, it is a valid order. He submitted, in any case of the matter, since, non-mentioning of the successor company's name in the assessment order is a mere procedural irregularity, it can be cured by restoring the assessment order to the Assessing Officer with a direction to pass a fresh assessment order in the name of the successor company. In this context, he relied upon a decision of Hon'ble Supreme Court in case of Sugandhi Vs. P. Raj Kumar (Civil Appeal No.3427 of 2020).

6. In rejoinder, learned counsel for the assessee submitted, the fact that the Assessing Officer has passed both the draft and the final assessment orders in the name of the erstwhile company is further evident from the fact that he has mentioned the PAN of the erstwhile company.

7. He further submitted, in the remand report filed before learned DRP in course of proceedings for assessment year 2015-16, the Assessing Officer has clearly admitted that the issue of merger of old

company with the new company was in his knowledge. However, due to some technical difficulty, the assessment order was passed in the name of the erstwhile company.

8. Learned counsel submitted, technical difficulty or glitch in the ITBA Portal cannot be attributed to the assessee as it is a contingency, which the Revenue ought to have resolved. In this context, he relied upon a decision of the Hon'ble jurisdictional High Court in case of Genpact India Pvt. Ltd. vs. DCIT – order dated 27.02.2024 in WP(C) 15296/2022.

9. We have given a thoughtful consideration to rival contentions and perused the material on record. We have also applied our mind to the judicial precedents cited before us. The factual matrix reveals that the return of income for the impugned assessment year was filed in the name of the erstwhile company Boeing International Corporation India Ltd. in November 2016. However, post filing of return of income, Boeing International Corporation India Ltd. merged with Boeing India Pvt. Ltd. through a scheme of merger approved on 27.02.2018. There is no dispute that the fact of merger was immediately brought to the notice of the Assessing Officer by the

assessee through letter dated 10.04.2018 with all supporting evidences. In fact, in the remand report dated 26.02.2019 furnished before learned DRP in course of proceedings in assessment year 2015-16, the Assessing Officer has clearly accepted this fact.

10. Thus, it is an undisputed fact that the merger of Boeing International Corporation India Ltd. with Boeing India Pvt. Ltd. was very much in the knowledge of the Assessing Officer much prior to framing of the draft assessment order for the impugned assessment year. In fact, at the draft assessment stage, the Assessing Officer made a reference to the TPO to determine the Arm's Length Price (ALP) of international transaction undertaken by the assessee in the impugned assessment year. Interestingly, the TPO has passed the order under Section 92CA(3) of the Act on 31.10.2019 in the name of Boeing India Pvt. Ltd., the successor company. Inspite of that, the Assessing Officer went ahead and framed the draft assessment order in the name of the erstwhile company, Boeing International Corporation India Ltd.

11. Before us, learned Departmental Representative has submitted that in the draft assessment order, the Assessing Officer has mentioned the name of both the erstwhile company and the successor company.

12. However, we do not accept the contention of the learned Departmental Representative. A cursory glance of the draft assessment order dated 21.12.2019 clearly reveals that against the name of the assessee, the Assessing Officer has mentioned "Boeing International Corporation India Ltd." Whereas, in the column showing address of the assessee, the Assessing Officer has mentioned "M/s. Boeing International Corporation India Ltd. (3rd Floor) DLF Centre, Sansad Marg, New Delhi (India)". The aforesaid facts clearly show that the assessment order has been passed in the name of Boeing International Corporation India Ltd., which as on the date of passing of the draft assessment order has become a non-existent entity. Undisputedly, against the draft assessment order, assessee raised objections before learned DRP. Interestingly, the directions of learned DRP is in the name of Boeing India Pvt. Ltd., the successor company. However, the final assessment order has again been passed by the Assessing Officer in the name of Boeing International Corporation India Ltd., the erstwhile company. More interestingly, the name of the successor company i.e. Boeing India Pvt. Ltd., nowhere appears in the body of the final assessment order.

13. It is further relevant to observe, the PAN appearing both in the draft and final assessment orders is of the erstwhile company, Boeing International Corporation India Ltd. and not of the successor company Boeing India Pvt. Ltd. Thus, the facts on record establish beyond doubt that both the draft as well as final assessment orders have been passed in the name of a non-existent company.

14. Having factually found it to be so, it needs to be examined what is the status of an order passed in the name of a non-existent entity, whether it is valid or void ab initio. This particular issue came up for consideration before the Hon'ble Supreme Court in case of PCIT vs. Maruti Suzuki India Ltd. (supra) . While deciding the issue, the Hon'ble Supreme Court held that passing of an order in the name of an entity which has merged with another entity will make the order void ab initio as it cannot be treated as mere procedural irregularity but affects the jurisdiction of the Assessing Officer. Though, learned Departmental Representative has heavily relied upon the decision of the Hon'ble Supreme Court in case of CIT vs. Mahagun Realtor Pvt. Ltd. (supra), however, in our view, the observations made in the said decision by the Hon'ble Supreme Court makes it factually

distinguishable. In case of Mahagun Realtor Pvt. Ltd. (supra), the Hon'ble Supreme Court has noticed that the fact of amalgamation was not brought to the notice of the departmental authorities. Further, even after the amalgamation, the assessee continued to file its return of income and responses in the name of the erstwhile company. In the aforesaid factual context, the Hon'ble Supreme Court held that the decision in case PCIT vs. Maruti Suzuki India Ltd. (supra) would not apply as facts are distinguishable. Thus, it is clearly evident, in case of CIT vs. Mahagun Realtor (supra), the Hon'ble Supreme Court never said that the ratio laid down in Maruti Suzuki India Ltd. is not good law.

15. On the contrary, the factual analysis of both the cases, would make it clear that Mahagun Realtor (supra) was decided based on its own peculiar facts. This has been lucidly explained by the Hon'ble jurisdictional High Court in case of CIT vs. Sony Mobile Communications India Pvt. Ltd. (supra), wherein the Hon'ble jurisdictional High Court applying the ratio laid down in the case of Maruti Suzuki (supra) has held the assessment order passed in the name of a non-existent entity to be void ab initio. For better clarity, we

reproduce the observations of Hon'ble jurisdictional High Court in extenso hereunder:

"16. We have heard the matter at some length.

17. Insofar as the crucial facts are concerned, as noticed above, there is no dispute.

18. Mr Kumar is right to the extent that the notice under Section 143(2) which is dated 29.08.2011 was issued to the erstwhile company. However, where we are unable to agree with him, is that because this notice was issued in the name of the erstwhile company, it would result in the non-applicability of the ratio enunciated by the Supreme Court in Maruti Suzuki. The reason why we say so is that when the Section 143(2) notice was issued i.e., on 29.08.2011, the amalgamation between the erstwhile company and the respondent company had not occurred. The amalgamation occurred only on 23.07.2013.

18.1 Therefore, the position that this Court needs to examine, is to how the AO, thereafter, should have proceeded in the matter. As noticed above by us, despite the fact that the appellant/revenue was informed on 06.12.2013, that amalgamation had occurred, the AO proceeded on the wrong course.

19. As a matter of fact, the DRP, while dealing with the respondent/assessee's objection, had noticed the change that had been brought about, by virtue of the erstwhile company amalgamating with the respondent/assessee. Despite this fact being brought to the notice of the AO, he continued on the wrong course, and framed the wrong impugned assessment order dated 22.12.2014, in the name of a non-existent company i.e., the erstwhile company.

20. The other aspect, which Mr Kumar has emphasized on, at great length is the applicability of the judgment in Mahagun Realtors Private Ltd. The important aspect required to be noticed, is that both judgments i.e., Maruti Suzuki and Mahagun Realtors Private Ltd. have been rendered by a bench comprising two judges. What is pertinent, is that in Maruti Suzuki, the Supreme Court considered the earlier judgments rendered by it in the matter of Spice Infotainment vs. Commissioner of Income tax (2020) 18 SCC 353] and Skylight Hospitality LLP v Assistant Commissioner of Income Tax, Circle-28(1), New Delhi (2018) 13 SCC 147 (Delhi), which dealt with the issue at hand.

20.1 In Maruti Suzuki, the Supreme Court made the following observations with regard to the aforementioned judgements:

> *"21. In Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] , a Division Bench of the Delhi High Court dealt with the question as to whether an assessment Neutral Citation Number: 2023/DHC/001366 ITA 115/2019 Page 8 of 15 in the name of a company which has been amalgamated and has been dissolved is null and void or, whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The High Court held that upon a notice under Section 143(2) being addressed, the amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void. This, in the view of the High Court, was not merely a procedural defect. Moreover, the participation by the amalgamated company would have no effect since there could be no estoppels against law : (SCC OnLine Del paras 11-12)*
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> *"11. After the sanction of the scheme on 11-4-2004, Spice ceases to exit w.e.f. 1-7-2003. Even if Spice had filed the returns, it became incumbent upon the Income Tax Authorities to substitute the successor in place of the said "dead person". When notice under Section 143(2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the assessing officer made the assessment in the name of M/s Spice which was non-existing entity on that day. In such proceedings an assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.*
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> *12. Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292-B of the Act.*
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> *25. A batch of civil appeals was filed before this Court against the decisions of the Delhi High Court, the lead appeal being Spice*

Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] . On 2-11-2017 [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] , a Bench of this Court consisting of Hon'ble Mr Justice Rohinton Fali Nariman and Hon'ble Mr Justice Sanjay Kishan Kaul dismissed the civil appeals and tagged special leave petitions in terms of the following order : (SCC pp. 354-55, para 1)

> *"Delay condoned. Heard the learned Senior Counsel appearing for the parties. We do not find any reason to interfere with the impugned judgment(s) [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] , [CIT v. Dimension Apparels (P) Ltd., 2014 SCC OnLine Del 7588 : (2015) 370 ITR 288] , [CIT v. Chanakaya Exports (P) Ltd., 2014 SCC OnLine Del 7678] , [CIT v. Chanakaya Exports (P) Ltd., ITA No. 721 of 2014, order dated 24-11-2014, [CIT v. Radha Appearals (P) Ltd., 2015 SCC OnLine Del 14568] , [CIT v. Intel Technology India (P) Ltd., 2015 SCC OnLine Kar 9493] , [CIT v. Chanakaya Exports (P) Ltd., 2015 SCC OnLine Del 14567] , [CIT v. Mayank Traders (P) Ltd., 2015 SCC OnLine Del 14633] , [CIT v. P.D. Associates (P) Ltd., 2015 SCC OnLine Del 14632] , [CIT v. Foryu Overseas (P) Ltd., 2015 SCC OnLine Del 14566] , [CIT v. Sapient Consulting Ltd., 2016 SCC OnLine Del 6615] passed by the High Court. In view of this, we find no merit in the appeals and special leave petitions. Accordingly, the appeals and special leave petitions are dismissed.*
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> *28. The submission, however, which has been urged on behalf of the Revenue is that a contrary position emerges from the decision of the Delhi High Court in Skylight Hospitality LLP [Skylight Hospitality LLP v. CIT, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] which was affirmed on 6-4-2018 [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] by a twoJudge Bench of this Court consisting of Hon'ble Mr Justice A.K. Sikri and Hon'ble Mr Justice Ashok Bhushan. In assessing the merits of the above submission, it is necessary to extract the order dated 6-4-2018 [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] of this Court : (Skylight Hospitality case [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] , SCC p. 147, para 1)*
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> > *"1. In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a*

clerical error which could be corrected under Section 292-B of the Income Tax Act. The special leave petition is dismissed. Pending applications stand disposed of."

Now, it is evident from the above extract that it was in the peculiar facts of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 292-B. The "peculiar facts" of Skylight Hospitality emerge from the decision of the Delhi High Court [Skylight Hospitality LLP v. CIT, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] . Skylight Hospitality, an LLP, had taken over on 13-5-2016 and acquired the rights and liabilities of Skylight Hospitality Pvt. Ltd. upon conversion under the Limited Liability Partnership Act, 2008 (the LLP Act, 2008). It instituted writ proceedings for challenging a notice under Sections 147/148 of the 1961 Act dated 30-3- 2017 for AY 2010-2011. The "reasons to believe" made a reference to a tax evasion report received from the investigation unit of the Income Tax Department. The facts were ascertained by the investigation unit. The reasons to believe referred to the assessment order for AY 2013-2014 and the findings recorded in it. Though the notice under Sections 147/148 was issued in the name of Skylight Hospitality Pvt. Ltd. (which had ceased to exist upon conversion into an LLP), there was, as the Delhi High Court held "substantial and affirmative material and evidence on record" to show that the issuance of the notice in the name of the dissolved company was a Neutral Citation Number: 2023/DHC/001366 ITA 115/2019 Page 10 of 15 mistake. The tax evasion report adverted to the conversion of the private limited company into an LLP. Moreover, the reasons to believe recorded by the assessing officer adverted to the approval of the Principal Commissioner. The PAN number of LLP was also mentioned in some of the documents. The notice under Sections 147/148 was not in conformity with the reasons to believe and the approval of the Principal Commissioner. It was in this background that the Delhi High Court held that the case fell within the purview of Section 292-B for the following reasons : (Skylight Hospitality case [Skylight Hospitality LLP v. CIT, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] , SCC OnLine Del para 18)

"18. … There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11-4-2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s Skylight Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."

29. The decision in Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] was distinguished with the following observations : (Skylight Hospitality case [Skylight Hospitality LLP v. CIT, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] , SCC OnLine Del para 19)

"19. Petitioner relies on Spice Infotainment v. CIT [This judgment has also been referred to as Spice Infotainment Ltd. v. CIT, (2012) 247 CTR (Del) 500] . Spice Corp. Ltd., the company that had filed the return, had amalgamated with another company. After notice under Sections 147/148 of the Act was issued and received in the name of Spice Corp. Ltd., the assessing officer was informed about amalgamation but the assessment order was passed in the name of the amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of assessment order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice under Sections 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provisions of the Companies Act. Order was in the

name of non-existing person and hence void and illegal."

30. From a reading of the order of this Court dated 6-4-2018 [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] in the special leave petition filed by Skylight Hospitality LLP against the judgment of the Delhi High Court rejecting its challenge, it is evident that the peculiar facts of the case weighed with this Court in coming to this conclusion that there was only a clerical mistake within the meaning of Section 292-B. *The decision in Skylight Hospitality LLP [Skylight Hospitality LLP v. CIT, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] has been distinguished by the Delhi, Gujarat and Madras High Courts in:*

(i) Rajender Kumar Sehgal [Rajender Kumar Sehgal v. CIT, 2018 SCC OnLine Del 12890] ; (ii) Chandreshbhai Jayantibhai Patel [Chandreshbhai Jayantibhai Patel v. CIT, 2018 SCC OnLine Guj 4812] ; and (iii) Alamelu Veerappan [Alamelu Veerappan v. CIT, 2018 SCC OnLine Mad 13593].

31. There is no conflict between the decisions of this Court in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] (dated 2-11-2017) and in Skylight Hospitality LLP v. CIT [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] (dated 6-4-2018)." [Emphasis is ours]

20.2 A perusal of paragraph 31 of the judgment in Maruti Suzuki would clearly reveal, that the Supreme Court concluded, that there was no conflict between the decisions rendered by the court in Spice Enfotainment Ltd. and Skylight Hospitality LLP.

21. Insofar as Mahagun Realtors is concerned, as observed hereinabove, the Court, once again, noticed the judgment rendered in Spice Enfotainment. As regards Maruti Suzuki, the Court in Mahagun Realtors made the following crucial observations:

> *"31. In Bhagwan Dass Chopra v. United Bank of India it was held that in every case of transfer, devolution, merger or scheme of amalgamation, in which rights and liabilities of one company are transferred or devolved upon another company, the successor-in-interest becomes entitled to the liabilities and assets of the transferor company subject to the terms and conditions of contract of transfer or merger, as it were. Later, in Singer India Ltd. v. Chander Mohan Chadha this court held as follows:*
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> > *"8. ..there can be no doubt that when two companies amalgamate and merge into one, the transferor company loses its identity as it ceases to have its business. However, their respective rights and Neutral Citation Number: 2023/DHC/001366 ITA 115/2019 Page 12 of 15 liabilities are determined under the scheme of amalgamation, but the corporate identity of transferor company ceases to exist with effect from the date the amalgamation is made effective."*

33. 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 2012-2013 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 nonexistent 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 2011-2012 must, in our view be adopted in respect of the present appeal which relates to AY 2012-2013. 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.

34. 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.

35. 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.

36. 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/nonexistent company. However, in the present case, for AY 2006-2007, there was no intimation by the assessee regarding amalgamation of the company. The ROI for the AY 2006-2007 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 2006-2007. For the AY 2007-2008 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.

37. Secondly, in the cases relied upon, the amalgamated companies had participated in the proceedings before the department and the courts held that the participation by the amalgamated company

will not be regarded as estoppel. However, in the present case, the participation in proceedings was by MRPL-which held out itself as MRPL.

22. As is evident upon a perusal of the aforementioned extracts from Mahagun Realtors the Court distinguished the judgment rendered in Maruti Suzuki, on account of the following facts obtaining in that case:

(i) There was no intimation by the assessee regarding amalgamation of the concerned company.

(ii) The return of income was filed by the amalgamating company, and in the "Business Reorganization" column, curiously, it had mentioned "not applicable".

(iii) The intimation with regard to the fact that the amalgamation had taken place was not given for the assessment year in issue.

(iv) The assessment order framed in that case mentioned not only the name of the amalgamating company, but also the name of the amalgamated company.

(v) More crucially, while participating in proceedings before the concerned authorities, it was represented that the erstwhile company i.e., the amalgamating company was in existence.

23. Clearly, the facts obtaining in Mahagun Realtors do not obtain in this matter.

24. As noticed above, even after the AO was informed on 06.12.2013, that the amalgamation had taken place, and was furnished a copy of the scheme, he continued to proceed on the wrong path. This error continued to obtain, even after the DRP had made course correction.

> *25. Thus, for the foregoing reasons, we are unable to persuade ourselves with the contention advanced on behalf of the appellant/revenue, that this is a mistake which can be corrected, by Neutral Citation Number: 2023/DHC/001366 ITA 115/2019 Page 15 of 15 taking recourse to the powers available with the revenue under Section 292B of the Act."*

16. Thus, applying the ratio laid down by the Hon'ble Supreme Court, in case of Maruti Suzuki (supra) and by the Hon'ble jurisdictional High Court in case of CIT vs. Sony Mobile Communications India Pvt. Ltd. (supra) to the factual matrix of the issue, we have no hesitation in holding that the impugned assessment order passed in the name of a non-existent entity is void ab initio. Accordingly, it is quashed.

17. In view of our decision above, the other grounds raised by the assessee including the grounds raised on merits having become purely academic, do not require adjudication. However, the issues are kept open.

18. In the result, the appeal is allowed as indicated above.

Order pronounced in the open court on 27/03/2024.

Sd/-	**Sd/-**
(DR. BRR KUMAR)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Dated: 27th March, 2024.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi