

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "J" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 2881/Ahd/2012 (A.Y. 2008-09)
I.T.A. No. 1231/Ahd/2014 (A.Y. 2009-10)
I.T.A. No. 1029/Ahd/2015 (A.Y. 2010-11)

Siemens Limited (Successor in interest to M/s. Siemens Healthcare Diagnostics Ltd.) Birla Aurora, level 21, Plot No. 1080 Dr. Annie Besant Road, Worli Mumbai-400 030. PAN : AAACB8542M (Appellant)	Vs.	ACIT, Circle-4 Baroda (Respondent)
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I.T.A. No. 2579/Mum/2022 (A.Y. 2008-09)

Siemens Limited (Successor in interest to M/s Siemens Healthcare Diagnostics Ltd.) Birla Aurora, level 21, Plot No. 1080 Dr. Annie Besant Road, Worli Mumbai-400 030. PAN : AAACS0764L (Appellant)	Vs.	DCIT, Circle 8(2)(1) Room No. 624 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400020. (Respondent)
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Assessee by	Shri Jeet Kamdar
Department by	Shri Samuel Pitta
Date of Hearing	15.06.2023
Date of Pronouncement	18.07.2023

ORDER

Per Bench:-

All the four appeals filed by the assessee relate to A.Y. 2008-09, 2009-10 & 2010-11 mentioned in the caption. All these appeals were heard together and are being disposed of by this common order.

2. Even though the assessee has raised many grounds, it has raised a legal contention in all these appeals challenging the validity of the assessment order on the ground that the assessment orders have been passed by the Assessing Officer on a non-existing entity and hence they are liable to be quashed. Since the above said legal contention goes to the root of the matter, we heard the parties on this legal issue.

3. The Learned AR submitted that the assessee herein was initially known as M/s. Siemens Health Care Diagnostics Limited (SHDL). It amalgamated with “Siemens Limited” by virtue of order dated 28.01.2011 passed by Hon'ble Bombay High Court and the order dated 1st March 2011 passed by Hon'ble Gujarat High Court pursuant to amalgamation petition filed by both the parties. The “appointed date” for amalgamation was 1st October 2009 and upon giving effect to the order of High Courts, the assessee company stood dissolved from the appointed date and merged with M/s. Siemens Limited.

4. The Learned AR further submitted that the assessee, vide its letter dated 29.4.2011 (filed with the Assessing Officer on 28.5.2011) intimated the fact of amalgamation of the assessee with M/s. Siemens Limited to the assessing officer and also enclosed copies of the orders passed by Hon'ble Bombay High Court and Hon'ble Gujarat High Court. However, the Assessing Officer, despite getting intimation about the merger, has passed the order in the name of the non-existing entity, viz., M/s. SHDL”. The details of the date of intimation and the date of passing of assessment order are tabulated below :-

ITA No.	Assessment year	Dated of intimation	Date of assessment order
1231/Ahd/2014	2009-10	29.4.2011 (filed on 20.5.2011)	19.2.2014
1029/Ahd/2015	2010-11	Do	26.2.2015
2881/Ahd/2012	2008-19	Do	23.10.2012

Accordingly, the learned AR contended that the assessment orders passed in the above said years on a non-existing entity has resulted in a substantive illegality, which cannot be cured under section 292B of the Act. In support of the above said proposition, the learned AR placed reliance on the decision rendered by Hon'ble Bombay High Court in the case of Teleperformance Global Services (P) Ltd. Vs. ACIT (435 ITR 725)(Bom) and also decision rendered by Hon'ble Supreme Court in the case of PCIT Vs. Maruti Suzuki India Ltd. (107 taxman.com 375). Accordingly learned AR submitted that the assessment order passed in the above said cases are liable to be quashed.

5. The Learned AR further submitted that the appeal filed by the assessee for A.Y. 2008-09 in ITA No.2889/Ahd/2012 was initially disposed of by the Tribunal, vide its order dated 19.9.2014 (At that point of time, it was mentioned as IT(TP) No. 2881/Ahd/2012). The Tribunal had set aside the issue relating to the transfer pricing adjustment to the file of the Assessing Officer/TPO. In the meantime, the order passed by the Tribunal was recalled for the limited purpose for deciding ground Nos. 1,2,3,5 & 6. Hence, the appeal for A.Y. 2008-09 in ITA No. 2281/Ahd/2012 was revived for adjudicating above grounds and the same is posted now. Pursuant to the order passed by the ITAT in restoring the issue of transfer pricing to the file of the Assessing Officer/TPO, an order giving effect was passed and the said order is being challenged before the Tribunal in ITA No. 2579/Mum/2022, which is also posted now. The Learned AR submitted that, if the original assessment order passed on 23.10.2012 is quashed on the reasoning that the same has been passed on a non-existent entity, then the order giving effect was passed by the TPO/Assessing Officer will also fail, in which case, the above said appeal will become infructuous. Accordingly the learned AR prayed for quashing of all the orders passed by the AO.

6. The Learned DR, on the contrary, placed reliance on the decision rendered by Hon'ble Supreme Court in the case of PCIT Vs. Mahagun Realtors (P) Ltd. (443 ITR 194) and submitted that Hon'ble Supreme Court

has held in the above said case that the corporate death of an entity upon amalgamation cannot be invalidated the assessment order.

7. In the rejoinder, the learned AR submitted that the judgement of Hon'ble Supreme Court in the case of PCIT v. Mahagun Realtors (P.) Ltd (443 ITR 194)(SC) is factually different from the present case and the ratio decided therein would not be applicable to the Appellant as the facts in that case before the Supreme Court was that no intimation regarding the fact of amalgamation was filed before the Revenue and the taxpayer in that case also suppressed the fact of amalgamation in the return filed under section 153A of the Act post amalgamation. However, in the present case, the Appellant immediately after the approval of the scheme of amalgamation by the Hon'ble Bombay High Court and the Gujarat High Court intimated the AO about the fact of its merger with Siemens Limited vide a letter dated 29 April 2011. Hence, the decision of the Hon'ble Supreme Court in Mahagun Realtors P. Ltd (supra) is distinguishable on facts and therefore is not applicable to the assessee's case.

8. We heard rival contentions on the above discussed legal issue and perused the record. It is submission of the assessee that it has intimated the fact of its amalgamation with M/s Siemens Ltd, vide its letter dated 29-04-2011 which was filed with the assessing officer only 20-05-2011. This fact has not been controverted by the revenue. Despite the intimation so given, the assessing officer has proceeded to pass the impugned assessment orders on the non-existing entity, viz., M/s. Siemens Health Care Diagnostics Limited, subsequent to such intimation, meaning thereby, the assessing officer has passed assessment orders for assessment years 2008-09 to 2010-11 in the name of non-existing entity.

9. The question as to whether an assessment order passed on a non-existing entity will survive in the eyes of law was examined by the Hon'ble

Supreme Court in the case of Maruti Suzuki Ltd (supra) and it was held that the assessment order passed in the name of non-existing entity will not survive. It was 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 Enfortainment on 2nd November, 2017. The decision in Spice Enfortainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-12. In doing so, this Court has relied on the decision in Spice Enfortainment.

34. 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."

10. The Hon'ble jurisdictional Bombay High Court has also quashed the assessment order passed in the name of non-existing entity in the case of Teleperformance Global Services (P) Ltd (supra) by following the decision rendered by Hon'ble Supreme court in the case of Maruti Suzuki Ltd (supra). The observations made by the Hon'ble Bombay High Court are extracted below:-

20. Position emerges that there is no dispute on factual aspect that TSPL had been amalgamated into M/s. Internet Global Services Pvt. Ltd. with effect from 1st April, 2010. As a matter of fact, same has been endorsed in the affidavit-in-reply filed on behalf of the respondents, referring to that petitioner is its ultimate successor. Thereafter, said company had also been submitting returns and those were assessed from time to time in respect of subsequent financial and assessment years. This aspect as well

has not been disputed. So is the case in respect of averments appearing in paragraph 4J. (c) of the petition to the following effect:

"(c) The Petitioner submitted that even after merger, 14/18 WP. 950-2020 sometimes the payers make payment to the Petitioner, however, erroneously continue to mention the PAN of the erstwhile company and not the Petitioner's company. However, the Petitioner in its return of income consider all such payments and claim all such deduction. Therefore, there can be no question of any escaping assessment for the assessment year 2012-13."

21. During the course of submissions, learned senior counsel Mr. Mistri refers to decision of the Supreme Court of India in the case of Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.⁷ (Maruti Suzuki)

22. The Supreme Court in the case of Maruti Suzuki (supra) had considered that income, which was subject to be charged to tax for the assessment year 2012-13 was the income of erstwhile entity prior to amalgamation. Transferee had assumed liabilities of transferor company, including that of tax. The consequence of approved scheme of amalgamation was that amalgamating company had ceased to exist and on its ceasing to exist, it cannot be regarded as a person against whom assessment proceeding can be initiated. In said case before notice under [Section 143\(2\)](#) of the Act was issued on 26.9.2013, the scheme of amalgamation had been approved by the high court with effect from 1.4.2012. It has been observed that assessment order 7 (2019) 416 ITR 613 (SC) 15 / 18 WP. 950-2020 passed for the assessment year 2012-13 in the name of non-existing entity is a substantive illegality and would not be procedural violation of [Section 292](#) (b) of the Act.

The Supreme Court in its aforesaid decision, has quoted an extract from its decision in Saraswati Industrial Syndicate Ltd. Vs. CIT⁸. The Supreme Court has also referred to decision of Delhi high court in the case of CIT Vs. Spice Entertainment Ltd.⁹ and observed that in its decision Delhi high court had held that assessment order passed against non-existing company would be void. Such defect cannot be treated as procedural defect and mere participation of appellant would be of no effect as there is no estoppel against law. Such a defect cannot be cured by invoking provisions under [section 292B](#). The Supreme Court had also taken note of decision in Spice Entertainment (supra) was followed by Delhi high court in matters, viz. CIT Vs. Dimensions Apparels (P.) Ltd.¹⁰, CIT Vs. Micron Steels (P) Ltd.¹¹; CIT Vs. Miscra India (P). Ltd.¹² and in CIT Vs. Intel Technology India Ltd.¹³ Karnataka high court has held, if a statutory notice is issued in the name of non- existing entity, entire assessment would be nullity in the eye of law. It has also been so held by Delhi high court in the case of Pr. CIT Vs. 8 (1990) 186 ITR 278 (SC) 9 (2018) 12 ITR-OL 134 (SC) 10 (2015) 370 ITR 288 11 (2015) 59 taxmann.com 470/233 Taxman 120/372 ITR 386 (Del.) (Mag.) 12 (2015) 57 taxmann.com

163/231 Taxman 809 (Delhi) 13 (2016) 380 UTE 272 (Kar.) 16/18 WP. 950-2020 Nokia Solutions and Network India (P) Ltd.¹⁴

23. The Supreme Court in Spice Infotainment Ltd. Vs. CIT¹⁵ found that there is no reason to interfere with the impugned judgment of Delhi high court and it found no merits in the appeal and special leave petition and were dismissed accordingly.

The Supreme Court had taken note of revenue resistance contending that contrary position emerges from decision of Delhi high court decision in Sky Light Hospitality LLP Vs. Assistant Commissioner of Income-tax¹⁶ and that it had been affirmed by the Supreme Court. However, the Supreme Court had also taken note of Sky Light LLP (supra) was in peculiar facts of the case, where the high court had categorically concluded that there was clerical mistake within the meaning of [section 292B](#) and the case had been distinguished by decisions of Delhi, Gujarat and Madras high courts in Rajender Kumar Sehgal Vs. ITO¹⁷; Chandreshbhai Jayantibhai Patel Vs. ITO¹⁸; and Alamelu Veerappan Vs. ITO¹⁹.

24. In the circumstances, though the respondents refer to decision of Delhi High Court in case of Sky Light Hospitality LLP Vs. 14 (2018) 90 taxmann.com 369/253 Taxman 409/402 ITR 21 (Delhi) 15 (2012) 247 CTR 500 (Delhi) 16 (2018) 92 taxmann.com 93 (SC) 17 (2019) 10 taxmann.com 233/260 Taxman 412 (Delhi) 18 (2019) 101 taxmann.com 362/261 Taxman 137 (Guj.) 19 (2018) taxmann.com 155/257 Taxman 72 (Mad.) 17/18 WP. 950-2020 Assistant Commissioner of Income Tax, Circle 28(1), New Delhi 20 it would be of little avail for the respondents. The decision in the case of Maruti Suzuki (supra) would hold sway over present facts and circumstances.

25. Foregoing discussion and decisions referred to on behalf of petitioner lead us to consider that petitioner has made out a case for reliefs and it would be appropriate to allow petition in terms of prayer clause (a). Rule is made absolute in terms of prayer clause (a). The writ petition is disposed of.”

11. Since the assessment orders for the assessment years 2008-09 to 2010-11 have been passed in the name of non-existing entity, all of them are liable to be quashed. Since the assessment order passed in AY 2008-09 has been quashed, the consequential order passed in that year in order to give effect to the decision of the Tribunal in the first round of proceedings will also not survive, since the original assessment order itself has been quashed. We order accordingly,

12. Accordingly, all the appeals of the assessee are allowed.

Pronounced in the open court on 18.7.2023.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai.; Dated : 18/07/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
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PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai