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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision:02.02.2023*

\+ **ITA 115/2019**

COMMISSIONER OF INCOME TAX .....Appellant

Through: Mr Sanjay Kumar, Sr. Standing Counsel with Ms Easha Kadian, Adv.

versus

SONY MOBILE COMMUNICATIONS IND PVT LTD (NOW MERGED WITH SONY INDIA PVT. LTD.) ….Respondent

Through: Mr Nageswar Rao, Advocate.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. This appeal is directed against the order dated 06.07.2018 passed by the Income Tax Appellate Tribunal [in short "Tribunal"] concerning Assessment Year (AY) 2010-2011.

2. This appeal has a chequered history, inasmuch as it has been placed before us, on account of a difference of opinion in the coordinate bench which was constituted at the relevant point in time**.** It is evident from a perusal of the order dated 18.05.2021, passed by a bench comprising Hon'ble Mr Justice Rajiv Sahai Endlaw [as he then was] and Hon'ble Mr Justice Sanjeev Narula, that two issues were being considered when the said order was passed:

(i) First, as to whether the Tribunal had rightly entertained the

additional ground raised before it? The additional ground concerned the jurisdiction of the AO in having the assessment order framed against a company, which was not in existence.

(ii) Second, whether this was a case, in which a substantial question of law arose, having regard to the judgment rendered by the Supreme Court in ***Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Ltd.*** (2019) 416 ITR 613 (SC).

2.1 Insofar as the first issue is concerned, both learned judges were of the view, that the Tribunal had correctly entertained the additional ground raised before it which concerned facets involving jurisdiction. This is apparent from a perusal of paragraph 18 and 22 of the order dated 18.05.2021.

3. It is in these circumstances, that the matter was then listed before the roster bench, on 27.07.2021. By the time the order dated 27.07.2021 was passed, the roster for Direct Taxes got changed.

3.1 On 27.07.2021, the roster bench which thereafter dealt with Direct Tax framed the following question of law:

> *"a) Whether notice under Section 143(2) of the Income Tax Act, 1961 having been issued in the name of erstwhile existing company, would the assessment order be legal and valid against the amalgamated company?*

4. The facts, which are necessary for deciding the question of law, as framed, are captured by the Tribunal in the impugned order. Broadly, the facts necessary for adjudication are the following:

(i) The earlier avatar of the respondent/assessee was a company, going by the name Sony Ericsson Mobile Communications (India) Private Limited.

(ii) The Income Tax return concerning the aforementioned assessment year was filed by Sony Ericsson Mobile Communications (India) Private Limited.

(iii) The name of the company i.e., Sony Ericsson Mobile Communications (India) Private Limited was changed to Sony Mobile Communications (India) Private Limited [in short "erstwhile company"], with effect from 18.04.2012.

5. Pursuant to a scheme of amalgamation sanctioned by this Court *via* judgment dated 23.07.2013, the erstwhile company merged into Sony India Pvt. Ltd. i.e., the respondent/assessee. As per the scheme of amalgamation, the merger took place with effect from 01.04.2013.

6. The record shows, that on 06.12.2013, a communication was addressed to the appellant/revenue, informing it about the factum of merger. This communication was accompanied by the scheme of amalgamation, as sanctioned by this Court.

6.1 Importantly, in the interregnum i.e., when the erstwhile company was in existence, a notice under Section 143(2) of the Income Tax Act [in short "Act"] was issued on 29.08.2011. This Assessing Officer (AO), on, 02.05.2012, followed this with a questionnaire issued under Section 142(1) of the Act, which was served, once again, on the erstwhile company, *albeit* after the change in name had been effected, insofar as the erstwhile company was concerned.

7. The record also shows (and this is something concerning which there is no dispute), that the AO referred the matter to the Transfer Pricing Officer (TPO) with regard to the determination of Arm's Length Price (ALP) involving the international transaction said to have been

undertaken by the respondent/assessee. The TPO opined, that an upward adjustment amounting to Rs.56,30,78,638/- would have to be made. Accordingly, a draft assessment order was framed by the AO on 31.03.2014.

8. Qua this, respondent/assessee preferred its objections with the Dispute Resolution Panel (DRP). The DRP dismissed the objections on 21.10.2014. It is pursuant to the dismissal of the respondent/assessee's objection, that the AO framed the assessment order dated 22.12.2014 under Section 143(3) read with Section 144C of the Act.

9. As noticed hereinabove, the respondent/assessee raised an additional ground before the Tribunal, concerning the absence of jurisdiction with regard to the framing of the order by the AO under Section 143(3) of the Act.

10. In particular, the ground articulated by the respondent/assessee was, that the assessment order had been framed *vis-à-vis* the erstwhile company, which did not exist in the eyes of law.

11. It is this objection, which found favour with the Tribunal. The Tribunal, thus, allowed the appeal preferred by the respondent/assessee, and while doing so, made the following observations:

> "…*The various other decisions relied by the Ld. Counsel for the assessee also support his case. So far as the various decisions relied by the Ld. DR are concerned these decisions in our opinion are distinguishable and not applicable to the facts of the present case. Since the final assessment in the instant case has been made on a non-existent company, therefore, following the decisions cited (supra) we hold that the assessment framed by the Assessing Officer on a non-existent company is a nullity in the eyes of law and void and the provisions of section 292B cannot rescue the department. Therefore, the order is unsustainable and accordingly the same is quashed. The additional ground raised by the assessee is accordingly allowed. Since the assessee succeeds on this legal ground,*

therefore, the various other grounds raised by the assessee in appeal are not adjudicated being academic in nature…"

12. It is in this backdrop, that submissions were advanced on behalf of the appellant/revenue by Mr Sanjay Kumar, learned senior standing counsel, while arguments on behalf of the respondent/assessee were put forth by Mr Nageswar Rao.

13. Mr Kumar submitted, that the judgment in ***Maruti Suzuki*** is distinguishable from the facts obtaining in the instant appeal. In this context, Mr Kumar adverted to the fact, that the jurisdictional notice under Section 143(2) of the Act [which is dated 29.08.2011] had been issued to the erstwhile company, when it was in existence, which was not the situation that obtained in ***Maruti Suzuki***.

13.1 The argument is, that in ***Maruti Suzuki***, the Supreme Court ruled in favour of the assessee, as the jurisdictional notice had been issued to a company which was not in existence i.e., the amalgamating company. As per Mr Kumar, the impugned assessment order dated 22.12.2014, which had been framed in the name of the erstwhile company constitutes an irregularity and/or a mistake, which can be corrected, by taking recourse to the provisions of Section 292B of the Act. In support of this plea, Mr Kumar has placed reliance on the judgment of the Supreme Court in ***Principal Commissioner of Income Tax (Central) - 2 vs. Mahagun Realtors (P) Ltd*** 2022 SCC OnLine SC 407.

13.2 Based on the said judgment, Mr Kumar's contention is, that upon amalgamation, the amalgamating company dissolves, and therefore, the liability to tax can be determined in the given facts and circumstances of the case, by perusing the amalgamated company.

13.3 It is in this context, that Mr Kumar has also relied upon the order sanctioning the amalgamation scheme i.e., order dated 23.07.2013.

14. Our attention has been drawn to the fact, that both in terms of the order sanctioning the amalgamation scheme as well as the amalgamation scheme itself, the respondent/assessee i.e., the amalgamated company was obliged to take over not only the liabilities of the erstwhile company, but also bear the burden of the proceedings which had been commenced against the erstwhile company being the transferee company.

15. On the other hand, Mr Nageshwar Rao, who appears on behalf of the respondent/assessee, as would be expected, has relied upon the ratio of the judgment in ***Maruti Suzuki***. Mr Rao has also taken us through certain paragraphs of the judgment rendered by the Supreme Court in ***Mahagun Realtors*** to draw a distinction between the facts obtaining in that case, and those obtaining in the instant case.

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*

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 estoppel against law : (SCC OnLine Del paras 11-12)

"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.

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.

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

(Del)] , [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.

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 two-Judge 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)

> *"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

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:

"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

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/non-existent 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****."*

[Emphasis is ours]

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

taking recourse to the powers available with the revenue under Section 292B of the Act.

26. Therefore, we are of the opinion, that the question of law, as framed, deserves to be answered against the appellant/revenue, and in favour of the respondent/assessee.

27. The appeal is disposed of in the aforesaid terms.

28. The impugned order is sustained.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 2, 2023
SA