



2025:DHC:11244-DB



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

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Date of Decision : 11.12.2025

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W.P.(C) 4178/2025 CM APPL. 19370/2025

SMS INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr. Sachit Jolly, Sr. Adv. with Ms. Mansha Anand, Mr. Abhyudaya Shankar Bajpai, Mr. Sohum Dua, Ms. Manvi and Mr. Ghunaim Siddiqui, Advs.

versus

ASSESSMENT UNIT INCOME TAX DEPARTMENT

.....Respondent

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, JSC.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO , J. (ORAL)

1. This petition has been filed with the following prayers:

“a) a writ in the nature of Certiorari, mandamus or any order appropriate writ for quashing of the Impugned Draft Assessment Order dated 05.03.2025 issued under Section 144C(1) of the Act for the AY 2022- 23 passed by the Respondent in the name of Paul Wurth India Private Limited (‘PWIPL’ or ‘the Company’) which stood amalgamated with effect from 01.04.2021 as being void ab initio, and all proceedings/actions pursuant/ consequent thereto.”

2. The case of the petitioner as contended by Mr. Sachit Jolly learned



Senior Counsel for the petitioner is that the assessment order has been passed in the name of M/s Paul Wurth India Pvt. Ltd. which stood amalgamated with M/s SMS India Pvt. Ltd. with effect from 01.04.2021, as such the order is void *ab initio*. According to him, the proceedings have been initiated on 01.06.2023 much after aforesaid company amalgamated with M/s SMS India (Pvt.) Ltd.

3. According to Mr. Jolly the draft assessment order under Section 144C(1) of the Act of 1961 is in the name of M/s Paul Wurth India Pvt. Ltd and on the PAN number of the said company.

4. He refers to the judgment of the Supreme Court in the case of ***Principal Commissioner of Income Tax v. Maruti Suzuki India Ltd. 2019 416 ITR 613 (SC)*** to contend that the Supreme Court has clearly held that the assessment proceedings could not have been initiated against the company which has been amalgamated. Relevant part of the Judgment reads as under:

“34.

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 292-B.

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. Succession to business otherwise than on death.—(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 assessed 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 assessed 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, assessed on the predecessor, cannot be recovered from him, the 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 assessed 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, the learned counsel appearing on



behalf of the respondent submitted that SPIL ceased to be an eligible assessee in terms of the provisions of Section 144-C read with clause (b) of sub-section (15). Moreover, it has been urged that in consequence, the final assessment order dated 31-10-2016 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.

35. On behalf of the Revenue, reliance has been placed on the decision of this Court in CIT v. Jai Prakash Singh [CIT v. Jai Prakash Singh, (1996) 3 SCC 525] (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. CIT [Chatturam v. CIT, 1947 SCC OnLine FC 9 : (1947) 15 ITR 302] 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 provisions to determine the amount of tax. Reliance was also placed on the decision in Maharaja of Patiala v. CIT [Maharaja of Patiala v. CIT, 1942 SCC OnLine Bom 173 : (1943) 11 ITR 202] (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 [CIT v. Jai Prakash Singh, (1996) 3 SCC 525]* 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 [CIT v. Jai Prakash Singh, (1996) 3 SCC 525]* and the two decisions that it placed reliance upon were evidently based upon the specific facts. *Jai Prakash Singh [CIT v. Jai Prakash Singh, (1996) 3 SCC 525]* involved a situation where the return of income had been filed by one of the legal representatives to whom notices were issued under Sections 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 objection was raised before the assessing officer. Similarly, the decision in *Maharaja of Patiala [Maharaja of Patiala v. CIT, 1942 SCC OnLine Bom 173 : (1943) 11 ITR 202]* 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.*

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 coordinate Bench of two learned Judges which dismissed the appeal of the Revenue in Spice Entertainment [CIT v. Spice Entertainment Ltd., (2020) 18 SCC 353] on 2-11-2017. The decision in Spice Entertainment [CIT v. Spice Entertainment Ltd., (2020) 18 SCC 353] 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 [CIT v. Spice Entertainment Ltd., (2020) 18 SCC 353].

37. 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.

38. For the above reasons, we find no merit in the appeal. The appeal is accordingly dismissed. There shall be no order as to costs.”

5. Mr. Anant Mann learned Junior Standing Counsel for the respondent/Revenue has not shown to us anything contrary to the submission made by Mr. Jolly.

6. Accordingly, the draft assessment order dated 05.03.2025 issued



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under Section 144C(1) of the Act for the Assessment Year (AY) 2022-23 in the name of M/s Paul Wurth India Pvt. Ltd which stood amalgamated with effect from 01.04.2021 is set aside.

7. Liberty shall be with the respondent/ Revenue to initiate proceedings against M/s SMS India Pvt. Ltd if permissible in law.
8. The petition along with the pending application is disposed of.

V. KAMESWAR RAO, J

VINOD KUMAR, J

DECEMBER 11, 2025

RT