IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	10.02.2021
Pronounced On	12.02.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.2779 of 2017
and
W.M.P.Nos.2714 of 2017 & 9640 of 2019

(Through Video Conferencing)

M/s. Mando Automotive India Private Limited,
(Company into which Mando India Ltd. was amalgamated)
Represented by its Authorized Signatory,
S.Logitha,
Plant - II, F 64, SIPCOT Industrial Park,
Irrungattukottai,
Sriperumbudur - 602 117. ... Petitioner

Vs.

The Deputy Commissioner of Income-tax,
Corporate Circle 4(1),
4th Floor, Main Building,
121, Mahatma Gandhi Road,
Chennai - 600 034. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarifi to call for the records of the respondent and quash the impugned order in AAACM7698H/13-14 dated 31.12.2016 made under Section 143(3) r.w.s. 92CA(3) of the Income Tax Act, 1961 for the Assessment 2013-14.

For Petitioner : Mr.N.V.Balaji.

For Respondent : M/s.Hema Muralikrishnan
Senior Standing Counsel.

O R D E R

The petitioner is aggrieved by the impugned order dated 31.12.2016 passed by the respondent under Section 143(3) read with Section 92CA(3) of the Income Tax Act, 1961 for the Assessment Year 2013-2014. The impugned order, a draft assessment order passed by the respondent is primarily sought to be challenged on the ground that it has been passed in the name of Mando India Limited which company has since merged/amalgamated with the petitioner company in terms of an order dated 25.06.2013 in Company Petition. Nos.99 and 100 of 2013 and had ceased to exist.

2. It is submitted that the said Mando India Ltd has ceased to exist in the eyes of law with effect from 01.3.2013 being the effective date in terms of the order dated 25.06.2013 of this Court in Company Petition Nos.99 and 100 of 2013 and was ordered to be dissolved without being wound.

3. The learned counsel for the petitioner has primary relied on the decision of the Hon'ble Supreme Court in Principal Commissioner of Income Tax Vs. Maruti Suzuki India Ltd, 2019 SCC Online SC 928. He draws my attention to paragraph 33 of the said judgement, wherein, it has been held that where an assessing officer was informed about the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation and where a notice was issued only in its name, the basis on which the notice was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceased to exist upon the approved Scheme of Amalgamation.

4. The Court therefore held that participation in the proceeding by the appellant therein cannot operate as an estoppel against law. The Court concluded that the revenue's appeal against the decision of the Delhi High Court in Spice Entertainment Ltd Vs. Commissioner of Service Tax, in ITA 475 of 2011 and ITA No. 476 of 2011, Judgement dated 03.08.2011, holds the field in as much as the Special Leave Petition filed by the Income Tax department in Civil Appeal No.285 of 2014 along with batch of other cases were dismissed by a common order by the Hon'ble Supreme Court in its order dated 02.11.2017.

5. The learned counsel for the petitioner further submits that after the order amalgamating the noticee company Mando India Ltd with the petitioner, the petitioner had not only filed the details with the Registrar of Companies on 08.07.2013 but also with the respondent on 20.05.2014 and obtained dated acknowledgement. It is under these circumstances, a notice dated 20.08.2015 under Section 143 (2) of the Income Tax Act, 1961 was issued to the Mando India Limited for the Assessment Year 2013-14.

6. It is further submitted that for the subsequent Assessment Year 2014-15, a notice dated 28.08.2015 was issued by the respondent in the correct name of the petitioner.

7. Further, the learned counsel for the petitioner submits that a second notice dated 02.11.2016 was addressed to Mando India Ltd. (Merged with Mando Automotive India Private

Limited the petitioner herein), yet the order has been passed in the name of a non-existing company Mando India Ltd. He therefore submits that the impugned order passed by the respondent was liable to be quashed.

8. The learned counsel for the petitioner places reliance on the other decisions of the High Court which have consistently taken similar views even prior to the decision in Spice Entertainment Ltd Vs. Commissioner of Service Tax, in ITA 475 of 2011 and ITA No. 476 of 2011, Judgement dated 03.08.2011, which was approved by the Honourable Supreme Court in Principal Commissioner of Income Tax Vs. Maruti Suzuki India Ltd, 2019 SCC Online SC 928. He has filed a typeset of case laws and relied on the following decisions:-

i. Principal Commissioner of Income Tax Vs. Maruti Suzuki India Ltd., [2019] 107 taxmann.com 375 SC.
ii. CIT Vs. Spice Enfotainment Ltd., in Civil Appeal No.285 of 2014 (SC).
iii. Spice Entertainment Ltd. Vs. Commissioner of Service Tax, in ITA 475 & 476/2011 (HC-New Delhi).
iv. Principal Commissioner of Income Tax Vs. BMA Capfin Ltd., [2018] 100 taxmann.com 330 (SC).
v. Commissioner of Income Tax-III Vs. Dimension Apparels (P.) Ltd., [2015] 370 ITR 288 (HC-New Delhi)
vi. Commissioner of Income Tax (C) -II Vs. Micra India (P.) Ltd., [2015] 231Taxman 809 (Delhi).
vii. Marshall Sons & Co. (India) Ltd., Vs. Income Tax Officer, [1997] 223 ITR 809 (SC).
viii. Khurana Engineering Ltd. Vs. Deputy Commissioner of Income Tax, [2014] 364 ITR 600 (HC-Gujarat).
ix. International Air Transport Association Vs. Deputy Commissioner of Income Tax, [2016] 68 taxmann.com 246 (HC-Bombay).
x. Assistant Commissioner of Income-tax, Media Circle-11, Chennai Vs. Vijay Television (P.) Ltd., (2018) TaxCorp (DT) 73784 (HC-MADRAS).
xi. eMudhra Ltd. Vs. Assistant Commissioner of Income Tax, [2020] 117 taxmann.com 550 (Karnataka).

9. Defending the impugned order of the respondent, the learned counsel for the respondent submits that the petitioner deliberately mis-led the Income Tax Department by filing a return on 29.11.2013 in the name of Mando India Ltd which had already merged with the petitioner with effect from 01.04.2013 and since the system picks the name given in the returns filed electronically, the impugned order came to be passed in the name of the merged company namely Mando India Ltd.

10. The learned counsel for the respondent further submits that certain income tax refund in the name of the merged company Mando India Ltd was collected by the petitioner using the PAN Number of the said company despite the said company having merged with the petitioner with effect from 01.03.2013. It is therefore submitted that the petitioner cannot take advantage of its own mistake and blame the respondent and take contradictory stand one for refund and for quashing the impugned order.

11. It is further submitted that in the proceeding before the respondent with the issue of notice under Section 143(2) of the Income Tax Act, 1961, no objection was raised by the petitioner regarding the jurisdiction even though the notice was issued in the name of the said Mando India Ltd which had already merged with the petitioner company. It is further submitted that though notice dated 20.08.2015 was issued in the name of the transferred company Mando India Ltd, the petitioner had no objection.

12. It is further submitted that prior to passing of the impugned order, a notice dated 05.09.2014 was issued under section 143 (2) of the Income Tax Act, 1961 to the merged company Mando India Ltd., and was addressed to M/s. Mando India Ltd (merged with Mando Automotive India Private Limited the petitioner herein). Finally, the learned counsel for the respondent also submitted that the transfer pricing order dated 31.12.2016 passed under Section 143(3) read with Section 92CA(3) of the Income Tax Act, 1961 was also issued in the name of Mando India Ltd (Merged with Mando Automotive India Private Limited). It is therefore submitted that the mistake in not mentioning the name of the petitioner was only a technical mistake. Even if the impugned draft assessment order is set aside, the respondent is not precluded from passing a fresh order.

13. The learned counsel for the respondent relied upon the following decisions in support of her submission:-

i. Oasys Green Tech (P.) Ltd. Vs. Income Tax Officer, [2020] 115 taxmann.com 153 (Madras)
ii. M/s.Oasys Green Tech Private Limited Vs. Income Tax Officer, passed by the Division Bench of this Court in W.A.Nos.534 & 535 of 2020, dated 30.07.2020.

14. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the case laws filed by the learned counsel for the petitioner and the learned counsel for the respondent in support of this case.

15. The decision of the Hon'ble Supreme Court in Principal Commissioner of Income Tax Vs. Maruti' Suzuki India Ltd., 2019 SCC Online SC 928 which essentially approved the decision of the Delhi High Court in Spice Entertainment Ltd Vs. Commissioner of Service Tax, in ITA 475 of 2011 and ITA No. 476 of 2011, Judgement dated 03.08.2011 in view of the dismissal of a batch of appeals filed by the Income Tax Department in Civil Appeal No 285 of 2014 and few other cases vide order dated 2.11.2017 has to be applied cautiously.

16. In Spice Entertainment Ltd Vs. Commissioner of Service Tax, in ITA 475 of 2011 and ITA No. 476 of 2011, Judgement dated 03.08.2011, the amalgamating company namely Spice Corp. Ltd. had filed its income tax returns on 13.10.2002 prior to merger. The said company stood merged with Spice Enfotainment Ltd by an order dated 11.02.2004. Meanwhile, before the aforesaid order of amalgamation, the returns filed by the transferor company Spice Corp. Ltd. on 30.10.2002 was taken up for scrutiny and a notice dated 18.10.2003 was issued in the name of Spice Corp. Ltd. under Section 143(2) of the Income Tax Act, 1961. The fact that the said company had merged with Spice Enfotainment Ltd. was brought to the notice of the Income Tax Department by the latter vide its letter dated 02.04.2004. It is under those circumstances, the Delhi High Court was of the view that after notice under Section 143(2) was sent, the transferee company namely Spice Enfotainment Ltd. had brought the same to the knowledge of the Assessing Officer, yet the officer failed to substitute the name of the said company in the record.

17. Similarly, in Maruti Suzuki India Ltd case referred to supra relied by the learned counsel for the petitioner, the amalgamation was ordered on 29.01.2013 with effect from 01.04.2012. Already the returns for the relevant Assessment Year had been filed on 28.11.2012 prior to order of amalgamation on 29.01.2013 for transferor company. After the amalgamation was ordered, an intimation was given on 02.04.2013. Thereafter, case was taken up for scrutiny assessment and notices came to be issued under Section 143(2) of the Income Tax Act, 1961 with the issue of the notice dated 26.09.2013 followed by a notice under Section 142(1) of the Income Tax Act, 1961. Despite such intimation, the notices continued to be issued in the name of the company which had already ceased to exist.

18. However, the facts of the present case are quite different. Despite the amalgamation with effect from 01.04.2013, the returns under Section 139(1) of the Income Tax Act, 1961 was filed by the petitioner in the name of the merged/transferor company, namely, Mando India Ltd, on 29.11.2013. Therefore, the reasoning adopted in the Judgement of the Delhi High Court and the reasoning adopted in the decision of the Hon'ble Supreme Court in Maruti Suzuki India Ltd case referred to supra cannot be applied to the facts of the present case.

19. Since, the transferor company Mando India Ltd. had merged with the petitioner Mando Automotive Private Limited (formally Mando India Steering Systems Private Limited) with effect from 01.04.2013 in terms of the order of amalgamation dated 25.06.2013 in C.P.Nos. 99 and 100 of 2013 and since the returns under Section 139 of the Income Tax Act, 1961 for the Assessment Year 2013-14 was filed in the name of defunct transferor Mando India Ltd, it is clear that the petitioner is bound by return filed by its director. Further, from a reading of Section 170 of the Income Tax Act, 1961, it is clear that the successor shall be assessed in respect of the income of the previous year after the date of succession. Section 170 of the Income Tax Act, 1961 reads as under:-

> Succession to business otherwise than on death.
> 170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—
> (a) the predecessor shall be 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.

20. It was incumbent on the part of the petitioner to have either got the PAN Number altered or surrendered, it should have filed a composite return in its name in terms of the Sanction Scheme of Amalgamation. Further, under Section 2 (1B) of the Income Tax Act, 1961, all the properties and liabilities of the amalgamating companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation. Therefore, the petitioner cannot disown its liability as a successor. Further, it is a paradox for the petitioner to expose the course of dead and defunct company in this Writ Petition if according to it the said company does not exist.

21. Further, as per the Sanctioned Scheme of amalgamation, all tax and liability of the transferor company (Mando India Limited), from the appointed dates, shall, for all purposes, be treated as the tax, cess, duty, liabilities or refunds, claims and etc. Further, the Sanction Scheme of amalgamation mandates the petitioner to file necessary revision in the income tax returns also pursuant to provisions of the Scheme.

22. Clause 7.1 (iii) of the Scheme of Amalgamation specially covers the situation. Therefore, it was the responsibility of the petitioner to file appropriate returns on behalf of the transferor as that of its. Clause 7.1 (iii) of the said Scheme is re-produced below:-

> 7. CONDUCT OF BUSINESS UNTIL EFFECTIVE DATE
> 7.1 With effect from the Appointed Date and up to and including the Effective Date
> (i) ....
> (ii) ....
> (iii) All taxes of any nature, cess, duties, direct and/or indirect, paid or payable by or on behalf of the Transferor Company from the Appointed Date onwards including all or any refunds and claims, including refunds or claims pending with any Revenue Authorities and including the right to claim credit for minimum alternate tax and carry forward of

accumulated losses, shall, for all purposes, be treated as the tax, cess, duty, liabilities or refunds, claims, accumulated losses and credits pertaining to indirect taxes such as Cenvat credit, VAT credit etc of the Transferee Company. Accordingly, upon the Scheme becoming effective, the Transferee Company is expressly permitted to revise, if it becomes necessary, its Income tax returns, Sales tax returns, Excise & Cenvat returns, service tax returns, other tax returns, and to claim refunds / credits, pursuant to the provisions of this Scheme. The Transferee Company is also expressly permitted to revise, if it becomes necessary, its income tax returns and related TDS Certificates, including TDS Certificates relating to transactions between or amongst the Transferor Company and the Transferee Company, and to claim refunds, advance tax and withholding tax credits, benefit of credit for minimum alternate tax and carry forward of accumulated losses etc., pursuant to the provisions of this Scheme.

23. Further, the Scheme of Amalgamation in Clause 7.1 (iv) indicates that the tax deducted at source (TDS)/advance tax/minimum alternate tax, if any, paid by the Transferor Company under the Income Tax Act, 1961 or any other statue in respect of income of the Transferor Company assessable for the period commencing from Appointed Date shall be deemed to be the tax deducted from/advance tax paid by the Transferee Company and credit for such TDS/advance tax/minimum alternate tax shall be allowed to the Transferee Company notwithstanding that certificates or challans for TDS/advance tax are in the name of the Transferor Company and not in the name of the Transferee Company. Clause 7.1 (iv) of the said Scheme is reproduced below:-

7. CONDUCT OF BUSINESS UNTIL EFFECTIVE DATE

7.1 With effect from the Appointed Date and up to and including the Effective Date

(i) ....

(ii) ....

(iii) ....

(iv) The tax deducted at source (TDS)/advance tax/minimum alternate tax, if any, paid by the Transferor Company under the Income Tax Act, 1961 or any other statue in respect of income of the Transferor Company assessable for the period commencing from Appointed Date shall be deemed to be the tax deducted from/advance tax paid by the Transferee Company and credit for such TDS/advance tax/minimum alternate tax shall be allowed to the Transferee Company notwithstanding that certificates or challans for TDS/advance tax are in the name of the Transferor Company and not in the name of the Transferee Company.

24. Further, the Clause 7.3 of the Scheme of Amalgamation also mandates that the petitioner was entitled, pending of the sanction of the Scheme, to apply to the Central Government and all other agencies, department and authorities concerned as are necessary under any law for such consents, approvals and sanctions which the petitioner may require to carry on the business of the said Mando India Limited.

25. Further, Clause 9.5 of the Scheme of Amalgamation also clearly makes it clear that all the statutory registration certificates, permits, approvals, permission, incentives, tenancy rights and etc. held or availed by the Transferor Company (Mando India Limited) was to be changed and/or to be deemed to have been available to the petitioner in the substituted name respectively and the same may be valid, effective and enforceable on the same terms and conditions to the extent permissible under law and it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement.

26. Thus, it is abundantly clear that the petitioner had taken over all the assets and liabilities of the said Mando India Limited. The petitioner should have filed in its tax return a composite tax return including the return for the Assessment Year 2013-2014 of the said Mando India Limited. Instead, the petitioner deliberately filed return in the name of the transferor company (Mando India Company) on 29.11.2013 which had already ceased to exist with effect from 01.03.2013.

27. Further, as per Section 139A(5) of the Income Tax Act, every person shall quote the Permanent Account Number (PAN) in all his returns or in any correspondence with the income-tax department. Thus, the petitioner deliberately mislead the Income Tax Department by assuming that it can file returns with the Permanent Account Number (PAN) of a defunct transferor company with the view to take undue advantage of certain lines of decision to force the Income Tax Department to commit such mistake. Permanent Account Number (PAN) signifies the identity of an assessee under the Income Tax Act, 1961 for assessment. Therefore, I do not find any merits in the submission of the learned counsel for the petitioner.

28. In my view, the petitioner played a trick on the Income Tax Department to hoodwink its liability. Since the return was filed by the petitioner in the name of a non-existing company namely Mando India Ltd, the petitioner cannot take advantage of its own mistake and turnaround and state that the respondent has passed the wrong order in the name of non-existing company.

29. In my view, ideally, the petitioner should have filed a composite return in its name for the Assessment Year 2013-14 together in order to arrive at the tax liability of the petitioner and that of Mando India Ltd which had since merged with the petitioner with effect from 01.03 2013. In any event, the purpose of filing income tax return is only to ascertain the tax liability which the petitioner has done in a half-hearted manner by filing the return in the name of a non-existing company Mando India Limited on the date of filing of such return.

30. There is also no dispute that the petitioner has not questioned the exercise taken by the respondent before passing impugned order and the Transfer Pricing Officer while determining the arm's-length price and the value of the transactions with the associated enterprises. Therefore, I do not find any justifiable reasons to interfere with the impugned order of the respondent in the present Writ Petition. Therefore, this Writ petition is therefore liable to be dismissed.

31. Accordingly, this Writ petition is dismissed. No costs. Consequently connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To
1. The Deputy Commissioner of Income-tax,
Corporate Circle 4(1),
4th Floor, Main Building,
121, Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to Mr.N.V. BALAJI, Advocate, S.R.No.8215
+1cc to Mrs.HEMAMURALI KRISHNAN, Advocate, S.R.No.7982

GMI(CO)
SM/25/02/2021

Pre- delivery order
in
W.P.No.2779 of 2017 and
W.M.P.Nos.2714 of 2017
& 9640 of 2019