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

% *Date of decision: 18.08.2023*

+ **ITA 452/2022**

+ **ITA 488/2022**

PR. COMMISSIONER OF INCOME TAX-1 Appellant
Through: Mr Sanjay Kumar, Sr. Standing
Counsel.

versus

M/S ARCHIT SECURITIES PVT. LTD. (SUCCESSOR OF M/S
ANIRUDH OVERSEAS PVT. LTD.) Respondent
Through: Mr Ved Jain with Mr Nischay
Kantoor, Advocates.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. These appeals concern Assessment Year (AY) 2006-07.
2. *Via* these appeals, the appellant/revenue has assailed a common order dated 14.12.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The Tribunal, *via* the impugned order, disposed of the appeal preferred by the revenue and the cross-objections filed by the respondent/assessee, against the order dated 15.03.2017 passed by the CIT(A), concerning the assessment order dated 28.02.2014 passed under Section 147/143(3) of the Income Tax Act, 1961 [in short, "the Act"].



4. We have heard counsel for the parties at some length. Our attention has been drawn by Mr Ved Jain, learned counsel, who appears on behalf of the respondent/assessee, to the order dated 05.01.2023 passed by the Court in ITA 452/2022 passed by this court.

4.1 A careful perusal of the said order shows that we had etched out the broad controversy and position of law *qua* the issue at hand. For the sake of convenience, the relevant parts of the said order are extracted hereafter:

“2. This appeal is directed against the order dated 14.12.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"]. The only issue which arises for consideration is: whether assessment proceedings should have been taken out against the transferor company, which was not in existence, upon a scheme of amalgamation being sanctioned?

2.1. In this case, the transferor company was an entity going by the name Anirudh Overseas Pvt. Ltd. The facts concerning the same are set out in paragraph 5 of the impugned order. For the sake of convenience, the said paragraph is extracted hereafter:

“5. We have carefully considered the submissions and gone through the impugned order as well as material placed on record. It is undisputed fact that erstwhile company, M/s. Anirudh Overseas Pvt. Ltd. has ceased to exist w.e.f 01.04.2008 as the same was amalgamated with M/s. Archit Securities Pvt. Ltd. by the order of the Hon'ble Delhi High Court dated 21.01.2011. From the records also, it is seen that vide letter dated 28.06.2011 filed on 27.07.2011 before the AO wherein the assessee had intimated that now in pursuance of the Hon'ble Delhi High Court order dated 21.01.2011, M/s.



Anirudh Overseas Pvt. Ltd. has ceased to exist and has merged with M/s. Archit Securities Pvt. Ltd. and requested to cancel the PAN number allotted to M/s. Anirudh Overseas Pvt. Ltd. Despite this information, the AO has proceeded to pass the assessment order in the name of non-existent company on 28.02.2014. The Tribunal in assessee's own case for AY 2005-06 (supra) have quashed assessment passed in the name of erstwhile company after observing and holding as under :-

"12. We have gone through the various judgments on the issue of passing of assessment order on a non-existing entity.

13. We find that the assessee has duly discharged his duties about the issue of merger of the assessee company. The Assessing Officer has quite aware of the issue of merger but still choose to issue notice u/s 148 and complete the assessment in the case of the assessee, which is no longer in existence. To that effect, the assessment has been completed on a non-existing entity.

Hence, keeping in view the judgment of Hon'ble High Court of Delhi in the case of Spice Infotainment Ltd. Vs CIT (2012) 247 CTR 500, Impsat (Pvt.) Ltd. vs. ITO -(2004) 91 ITO 354 (Del), Hewlett Packard India (P.) Ltd. in IT A No. 40 I6IoeII2005, Modi Corp. Ltd. Vs JOLT 105 TTJ 303 and ACIT Vs M?s DLF Cyber City Developers Ltd. and the order of the Tribunal in the case of Maruti Suzuki Pvt. Ltd. 72 taxman 164, we hereby hold that the decision of the Id. CIT(A) in annulling the assessee completed on a non-existing entity is legally valid. With regard to the compliance by the assessee in the name land said to be representing Anirudh Overseas Pvt. Ltd. (not in the name of Archit Securities Pvt. Ltd.), we leave it to the discretion of the revenue to take any action as



deemed fit."

3. *Inter alia*, a perusal of the above extract would show that the Assessing Officer (AO) was informed via letter dated 28.06.2011 [which was filed on 27.07.2011 with him] that pursuant to a scheme sanctioned by this court on 21.01.2011, Anirudh Overseas Pvt. Ltd. i.e., the transferor company had ceased to exist as it had merged with the respondent i.e., Archit Securities Pvt. Ltd.

3.1. It appears that, despite this information having been furnished to the AO, he proceeded to frame an assessment order on 28.02.2014 qua Anirudh Overseas Pvt. Ltd., which was no longer in existence. The Tribunal's order also shows that this very mistake was noticed by it, with regard to the earlier Assessment Year (AY) i.e., AY 2005-06.

4. Mr Sanjay Kumar, who appears on behalf of the appellant/revenue, informs us that the appeal against the said order passed by the Tribunal concerning AY 2005-06, was not preferred as the tax impact was less than the prescribed monetary threshold.

4.1. Mr Kumar, in support of his plea that the Tribunal had erred in law relied upon the judgment of the Supreme Court in **PCIT v. Mahagun Realton (P.) Ltd.** (2022) SCO OnLine SO 407.

5. The Tribunal, on the other hand, in the ease of the assessee concerning AY 2005-06, relied upon its own decision in **Maruti Suzuki India Ltd.** 72 taxman 164. There is no dispute that the Tribunal's decision in **Maruti Suzuki India Ltd.** was carried in appeal to the Supreme Court.

5.1 It is relevant to note that the judgment in **Mahagun Realtors (P.) Ltd.** adverts to the judgment rendered by another two judges' bench of its Court in **Maruti Suzuki India Ltd.**, 2019 SCC OnLine SC 928. This is apparent on perusal of paragraphs 33 and 34 of the said judgement. The relevant observations of the Supreme Court in **Mahagun Realtors (P.) Ltd.** are extracted hereafter:



“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.

.....

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 coordinate 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 AY2012-2013. 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. "*

5.2. *After noting the aforesaid, the Supreme Court distinguished the decision in **Maruti Suzuki India Ltd.** by advertng to the facts obtaining in the said case. For the sake of convenience, the said paragraphs are extracted hereafter:*

*"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]

6. *The facts recorded by the Tribunal, prima facie, seem to fit into those which were noticed in **Mahagun Realtors (P.) Ltd.** vis-a-vis **Maruti Suzuki India Ltd.** which, inter alia, were that the AO was informed about the fact that the transferor company i.e., **Anirudh Overseas Pvt. Ltd.** had ceased to exist, and despite such information being given, he proceeded to frame an assessment order against **Anirudh Overseas Pvt. Ltd.***
7. *Given this position, presently, we are of the view that the appeal cannot be sustained.*
8. *Since Mr Kumar seeks accommodation to examine the matter further, list the appeal on 14.02.2023."*

5. As noted in our order dated 05.01.2023, it is not in dispute that the Assessing Officer (AO) was informed that **Anirudh Overseas Pvt. Ltd.**, i.e., the transferor company, had ceased to exist as it had merged with the respondent/assessee, i.e., **Archit Securities Pvt. Ltd.** This information was given to the AO via letter dated 28.06.2011; which was filed with him on 27.07.2011.

5.1 The Tribunal adverted to these very facts in paragraph 5 of the impugned order and thereafter concluded that having regard to the position of law, the assessment order dated 28.02.2014 could not be sustained as it had been passed against an entity which was not in existence, i.e., **Anirudh Overseas Pvt. Ltd.**



6. We agree with the view taken by the Tribunal.
7. According to us, no substantial question of law arises for our consideration.
8. The appeals are accordingly closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 18, 2023 / tr