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

\+ ITA 606/2019

PR. COMMISSIONER OF INCOME TAX – 9 ..... Appellant

Through: Mr.Zoheb Hossain, Sr.SC and Mr.Sanjeev Menon, Jr.SC.

versus

M/S VERTEX CUSTOMER MANAGEMENT INDIA PVT. LTD. (FORMERLY KNOWN AS VERTEX CUSTOMER SERVICES INDIA PVT. LTD.) ..... Respondent

Through: Ms.Ananya Kapoor, Mr.Shivam Yadav, Mr.Utkarsh Kumar Gupta and Mr.Sumit Lalchandani, Advs.

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PR. COMMISSIONER OF INCOME TAX – 9 ..... Appellant

Through: Mr.Zoheb Hossain, Sr.SC and Mr.Sanjeev Menon, Jr.SC.

versus

M/S VERTEX CUSTOMER MANAGEMENT INDIA PVT. LTD. (FORMERLY KNOWN AS VERTEX CUSTOMER SERVICES INDIA PVT. LTD.) ..... Respondent

Through: Ms.Ananya Kapoor, Mr.Shivam Yadav, Mr.Utkarsh Kumar Gupta and Mr.Sumit Lalchandani, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **14.02.2024**

1. The instant appeals are directed against the orders of the Income Tax Appellate Tribunal ["**ITAT**"] dated 03 October 2018 [ITA 606 of

2019] and 06 July 2018 [ITA 609 of 2019] for Assessment Year [“**AY**”] 2011-2012 which has annulled the assessments made under Section 143 of the Income Tax Act, 1961 [“**Act**”] bearing in mind the fact that the same were drawn against M/s. Vertex Customer Services India Pvt. Ltd. (the amalgamating entity), while enforcing the same against the respondent / assessee.

2. As we peruse the record, we find that the Dispute Resolution Panel [“**DRP**”] had duly acknowledged and taken note of the Scheme of Arrangement, as would be evident from reading of its order dated 21 September 2015 and which had referred to that Scheme having been duly sanctioned by this Court on 24 April 2014.

3. In view of the aforesaid, it is manifest that the principles enunciated by the Supreme Court in **Principal Commissioner of Income Tax v. M/s Mahagun Realtors (P) Ltd** [2022 SCC OnLine SC 407] would apply.

4. We note that while dealing with such a situation and where an assessment order comes to be drawn in the name of the company which has ceased to exist, the Supreme Court in *Mahagun Realtors* has held as follows:-

> "**20.** In Saraswati Syndicate (supra), the facts were that after amalgamation, the transferee-company claimed exemption from tax, of a sum which had been allowed as a trading liability - on accrual basis, in the hands of the transferee-company which had ceased to exist. The Revenue disallowed that claim ; that view was upheld. This court stated that :
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> "In an amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the share- holders of each blending company become substantially the share- holders in the company which is to carry on

the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See : Halsbury's Laws of England, 4th Edition vol. 7 para 1539. Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity.

In General Radio and Appliances Co. Ltd. v. M. A. Khader (1986) 2 SCC 656, the effect of amalgamation of two companies was considered. M/s. General Radio and Appliances Co. Ltd. was tenant of a premises under an agreement providing that the tenant shall not sub-let the premises or any portion thereof to anyone without the consent of the landlord. M/s. General Radio and Appliances Co. Ltd. was amalgamated with M/s. National Ekco Radio and Engineering Co. Ltd. under a scheme of amalgamation and order of the High Court under sections 391 and 394 of the Companies Act, 1956. Under the amalgamation scheme, the transferee-company, namely, M/s. National Ekco Radio and Engineering Company had acquired all the interest, rights including leasehold and tenancy rights of the transferor-company and the same vested in the transferee-company. Pursuant to the amalgamation scheme the transferee-company continued to occupy the premises which had been let out to the transferor company. The landlord initiated proceedings for the eviction on the ground of unauthorised sub-letting of the premises by the transferor-company. The transferee-company set up a defence that by amalgamation of the two companies under the order of the Bombay High Court all interest, rights including lease-hold and tenancy rights held by the transferor-company blended with the transferee-company, therefore the transferee-company was the legal tenant and there was no question of any sub-letting. The rent controller and the High Court both decreed the landlord's suit. This court in appeal held that under the order of amalgamation made on the basis of the High Court's order, the transferor-company ceased to be in existence in the eye of law and it effaced itself for all practical purposes. This decision lays down that after the amalgamation of the two companies the transferor-company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets. In the instant case the Tribunal rightly held that the appellant-company was a separate entity and a different assessee, therefore, the allowance made to Indian Sugar Company, which was a different assessee, could not be held to be the income of the amalgamated company for purposes of section 41(1) of the Act. The High Court was in error in holding that even after amalgamation of two companies, the transferor-company did not become non-existent instead it continued its entity in a blended form with the appellant- company. The High Court's view that on amalgamation 'there is no complete destruction of corporate personality of the transferor-company instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one the transferor-company loses its entity as it ceases to have its business. However, their respective rights of liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor-company ceases to exist with effect from the date the amalgamation is made effective."

22. The effect of amalgamation in the context of Income-tax, was again considered in another earlier decision, i.e., Marshall Sons and Co. (India) Ltd. v. ITO. There, the court held that:

"14. Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide, viz., January 1, 1982. It is true that while sanctioning the scheme, it is open to the court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case. If the court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer. But where the court does not prescribe any specific date but merely sanctions the scheme presented to it - as has happened in this case - it should follow that the rate of amalgamation/date of transfer is the date specified in the scheme as 'the transfer date'. It cannot be otherwise. It must be remembered that before applying to the court under section 391(1), a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the court may take some time ; indeed, they are bound to take some time because several steps provided by sections 391 to 394A and the relevant Rules have to be followed and complied with. During the period the proceedings are pending before the court, both the amalgamation units, i.e., the transferor-company and the transferee-company may carry on business, as has happened in this case but normally provision is made for this aspect also in the scheme of amalgamation. In the present scheme, clause 6(b) does expressly provide that with effect from the transfer date, the transferor company (subsidiary company) shall be deemed to have carried on the business for and on behalf of the transferee company (holding company) with all attendant consequences. It is equally relevant to notice that the courts have not only sanctioned the scheme in this case but have also not specified any other date as the date of transfer/amalgamation. In such a situation, it would not be reasonable to say that the scheme of amalgamation takes effect on and from the date of the order sanctioning the scheme. We are, therefore, of the opinion that the notices issued by the Income-tax Officer (impugned in the writ petition) were not warranted in law. The business carried on by the transferor company (subsidiary company) should be deemed to have been carried on for and on behalf of the transferee company. This is the necessary and the logical consequence of the court sanctioning the scheme of amalgamation as presented to it. The order of the court sanctioning the scheme, the filing of the certified copies of the orders of the court before the Registrar of Companies, the allotment of shares etc. may have all taken place subsequent to the date of amalgamation/transfer, yet the date of amalgamation in the circumstances of this case would be January 1, 1982. This is also the ratio of the decision of the Privy Council in Raghubar Dayal v. Bank of Upper India Ltd. AIR 1919 PC 9, relied on.

Counsel for the Revenue contended that if the aforesaid view is adopted then several complications will ensue in case the court refuses to sanction the scheme of amalgamation. We do not see any basis for this apprehension. Firstly, an assessment can always be made and is supposed to be made on the transferee company taking into account the income of both the transferor and transferee company. Secondly, and probably the more advisable course from the point of view of the Revenue would be to make one assessment on the transferee company taking into account the income of both, of transferor or transferee companies and also to make separate protective assessments on both the transferor and transferee companies separately. There may be a certain practical difficulty in adopting this course inasmuch as separate balance-sheets may not be available for the transferor and transferee companies. But that may not be an insuperable problem inasmuch as assessment can always be made, on the available material, even without a balance-sheet. In certain cases, best-judgment assessment may also be resorted to. Be that as it may, we need not pursue this line of enquiry because it does not arise for consideration in these cases directly." (emphasis supplied)

21. Saraswati Syndicate (supra) noticeably was decided in relation to assessment issues when amalgamation was not separately defined under the Income-tax Act. By an amendment of 1967, this term was for the first time defined in the form of section 2(1A). That provision reads as follows :

"(1A) "amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation ;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation, become the liabilities of the amalgamated company by virtue of the amalgamation ;

(iii) shareholders holding not less than nine-tenths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company ;"

31. In Maruti Suzuki (supra), the scheme of amalgamation was approved on January 29, 2013 with effect from April 1, 2012, the same was intimated to the Assessing Officer on April 2, 2013, and the notice under section 143(2) for the assessment year 2012-13 was issued to the amalgamating company on September 26, 2013. This court in the 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 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 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 co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment on November 2, 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the special leave petition for the assessment year 2011-12. 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 the assessment year 2011-12 must, in our view be adopted in respect of the present appeal which relates to the assessment year 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."

5. In view of the aforesaid, we find no ground or justification to interfere with the view as expressed by the ITAT.

6. Consequently, the instant appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 14, 2024/MJ