IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH MUMBAI

BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&

SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No.7066/Mum/2019
(**Assessment Year :2016-17**)

M/s. White Crow Research Private Limited (as a successor to Arpeo Data Research Private Limited) A-101/106, Supreme Business Park, Behind Lake Castle, Hiranandani Gardens Powai, Mumbai	Vs.	Income Tax Officer Ward 15(1)(1) Aayakar Bhavan Maharshi Karve Road Mumbai – 400 020
PAN/GIR No.AABCW0541N (Merged Entity PAN) AAJCA3506F(Non-existent entity PAN		
(Appellant)	..	**(Respondent**)

Assessee by	Shri K. Kaushal & Ms. Hirali Desai
Revenue by	Shri Mehul Jain
Date of Hearing	**11/10/2021**
Date of Pronouncement	**20/10/2021**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No.7066/Mum/2019 for A.Y.2016-17 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-24/ITO-15(1)(1)/it-307/2018-19 dated 26/08/2019 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act)

dated 24/12/2018 by the ld. Income Tax Officer-15(1)(1), Mumbai (hereinafter referred to as ld. AO).

2. Apart from the regular grounds of appeals, we find assessee has raised the additional ground vide letter dated 19/08/2021 which is as under:-

> *"6. On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer ('AO') erred in passing the assessment order passed under section 143(3) of the Income Tax Act, 1961 dated 24 December 2018 in the name of 'Arpeo Data Research Private Limited', an entity which was not in existence on the date of passing the impugned order on account of its amalgamation with the Appellant.*
>
> *It is the humble prayer of the Appellant that the assessment order passed by the Ld. AO be held as bad in law, illegal, null and void-ab-initio and as such deserve to be quashed.*
>
> *The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."*

3. We find that the aforesaid additional ground is purely a legal issue and does not require verification of any facts and in the light of the decision of the Hon'ble Supreme Court in the case of NTPC Limited vs. CIT reported in 229 ITR 383, we are inclined to admit the aforesaid additional ground of appeal and take up the same for adjudication.

3.1. The primary facts pertaining to adjudication of aforesaid additional grounds are that Arpeo Data Research Private Limited (hereinafter referred to as or 'amalgamating company') having PAN AAJCA3506F is a company which was incorporated in March 2011 and is engaged in the business of providing HR Consultancy and Support Services. It had filed its return of income for AY 2016-17 on 30/11/2016 declaring total income of Rs. 15,76,630 with Income-tax Officer - 15(1)(1), Mumbai. White

Crow Research Private Limited (hereinafter referred to as 'White Crow' or 'amalgamated company') having PAN AABCW0541N is a company which was incorporated in the year 2010 and is engaged in providing a global talent research and insights. On 17/03/2017, the Board of Directors of Arpeo Data Research Private Limited approved the scheme of amalgamation of Arpeo Data Research Private Limited into White Crow Research Private Limited. Accordingly, a scheme of amalgamation was filed before the Hon'ble National Company Law Tribunal ('NCLT), Mumbai bench for approval. On 22/7/2017, a notice under section 143(2) of the Act was issued to the assessee by the jurisdictional Assessing Officer for initiating the assessment proceedings for AY 2016-17.

3.2. Immediately thereafter, on 27/07/2017, the Jurisdictional Assessing Officer was given a notice (along with a copy of the scheme of amalgamation) for seeking objections on the proposed scheme of amalgamation in terms of section 230(1) and section 230(5) of the Companies Act, 2013. Vide order dated 07/02/2018, the Hon'ble NCLT, Mumbai bench sanctioned the scheme of amalgamation of Arpeo Data Research Private Limited with White Crow Research Private Limited with effect from 1st April 2017. Pursuant to the above, Arpeo Data Research P. Ltd. got amalgamated into White Crow Research P. Ltd., the appointed date being 01/04/2017. Accordingly, White Crow Research P. Ltd. became a successor to Arpeo Data Research P. Ltd. (hereinafter referred to as the assessee') and Arpeo Data Research P ltd ceased to exist.

3.3. It is not in dispute that M/s. Arpeo Data Research Pvt. Ltd., got amalgamated with White Crow Research Pvt. Ltd. w.e.f. 01/04/2017 vide NCLT, Mumbai order dated 07/02/2018. We find that when the scheme of amalgamation was pending before the Hon’ble NCLT, Mumbai, the

assessee had indeed issued notice in terms of Section 230 of the Companies Act 2013 to the Jurisdictional Assessing Officer of Arpeo Data Research Pvt. Ltd., on 27/07/2017. The evidence in this regard is enclosed in pages 94 and 95 of the paper book filed before us. This notice is meant for the purpose of enabling the Assessing Officer to file objections, if any, to the proposed scheme of amalgamation within 30 days from the date of receipt of the said notice. We also find from perusal of the case records and also various letters filed by the assessee during the course of assessment proceedings which are enclosed in paper book filed before us, that the assessee had during the course of assessment proceedings also, vide letter dated 14/11/2018 had specifically drawn the attention of the ld. AO about the fact of merger of Arpeo Data Research Pvt. Ltd., with White Crow Research Pvt. Ltd., In fact, the ld. AO had taken cognizance of the fact of amalgamation in para 5 of his order by categorically stating that White Crow Research Pvt. Ltd., had filed letter dated 14/11/2018 on behalf of assessee company for the reason that assessee company has now been merged with White Crow Research Pvt. Ltd., Further cognizance has also been taken by the ld. AO in para 8 of his order wherein he had mentioned in bold letters as under:-

> *"It is pertinent to mention here that -*
> *(a) in subsequent year/s, as already mentioned in para No. 1 of the letter dated 14.11.2018 submitted in the assessee company ARPL- the assessee Company has been amalgamated with WRPL*

3.4. We hold that despite the fact of ld. AO being duly intimated about the fact of amalgamation by the assessee during the pendency of proceedings before the Hon'ble NCLT, Mumbai and also during the course of assessment proceedings and more especially the ld. AO having taken cognizance of the fact of amalgamation in his assessment order in para 5 and para 8 stated supra, the ld. AO ought not to have framed the

assessment in the name of a non-existent entity i.e., M/s. Arpeo Data Research Pvt. Ltd., The ld. AO should have framed the assessment in the name of White Crow Research Pvt. Ltd (successor to M/s. Arpeo Data Research Pvt. Ltd.). Hence, it could be seen that assessment was framed by the ld. AO in the name of non-existent entity.

3.5. We find that the ld. DR placed on record the submissions given by the Assessing Officer vide letter dated 09/10/2021 after the completion of hearing and the said submissions are reproduced hereunder for the sake of convenience:-

> *"3. In this respect comments on additional ground "on the facts and circumstances of case and in law, the Ld. Assessing Officer erred in passing the assessment order passed under section 143(3) of Income Tax Act 1961 dated 24 December 2018 in the name of 'Arpeo Data Research Private Limited', an entity which was not in existence on the date of passing the impugned order on account of its amalgmation with appellant " is as follows:*
>
> *(a) As on the date the PAN- AAJCA3506P on the system reveal the name of M/s Arpeo Data Research I'M. Lid. Tins show PAN Number is in existence.*
> *(b) The Penalty Order dated 21.06.2019 and other communications was done on this PAN and name i.e. (M/s Arpeo Data Research Pvt Ltd.) without raising any objections from assessee's side.*
>
> *(c) Application for stay of Demand dated October 30,2019 mention the PAN No. AAJCA35U6F.*
>
> *(d) Tax Payment was done in name of M/s Arpeo Data Research Pvt. Ltd on 11-02-2019. I his show Bank transactions were done in name of entity.*
>
> *{e) Form-35 for Appeal to Ld. CTT(A) dated 22.01.2019 was filed in name of M/s Arpeo Data Research Pvt Ltd. With PAN- AAJCA3506F*
>
> *4. In view of above, the additional grounds mentioned above stands void.*

3.6. Apart from this, the ld. DR argued that even the appeal was filed by the assessee before this Tribunal and also before the ld. CIT(A) in the name of Arpeo Data Research Pvt. Ltd., only and not in the name of White Crow Research Pvt. Ltd., Hence, even the assessee had not taken

cognizance of amalgamation. Accordingly, he argued that the assessment should not be quashed on this mere technical defect as even the assessee had not taken cognizance from the fact of amalgamation post completion of assessment proceedings.

3.7. The ld. AR in his rebuttal to the arguments advanced by the ld. DR has stated that the appeal before this Tribunal was filed in the name of Arpeo Data Research Pvt. Ltd., (now merged with White Crow Research Pvt. Ltd.,) and that the same has been signed by White Crow Research Pvt. Ltd., Director as the successor of M/s. Arpeo Data Research Pvt. Ltd., With regard to the filing of appeal before the ld. CIT(A) in the name of Arpeo Data Research Pvt. Ltd., (i.e. non-existent entity), the ld. AR argued that appeal before the ld. CIT(A) was electronically filed and the name of the tax payer therein is prefilled, auto polluted and uneditable. However, the grounds of appeal and the statement of facts filed before the ld. CIT(A) clearly indicate that the appeal was filed only by the merged entity.

3.8. We find that merely because the assessee has participated in the assessment proceedings, the stay proceedings and penalty proceedings post completion of assessment, the inherent defects embedded in the assessment order by way of framing the assessment in the name of non-existent entity would not get cured. It is elementary that "there can be no estoppel against this statute". Hence, merely because the assessee has participated in the assessment proceedings, penalty proceedings and stay proceedings, the assessment framed in the name of amalgamating company (i.e. non-existent entity) would still have to be held as void ab initio in the eyes of law. Reliance in this regard has been rightly placed by the ld. AR on the decision of the Co-ordinate Bench decision of this

Tribunal in the case of Satyam Computer Services Ltd., vs. DCIT reported in 186 ITD 39 wherein under similar facts and circumstances, this Tribunal had quashed the entire assessment by holding as under:-

> ***"9.*** *We find that the issue involved in the present appeal lies in a narrow compass i.e. as to whether or not the assessment order passed in the name of a non-existent company would be sustainable in the eyes of law. We find that the issue hereinabove involved is no more res integra pursuant to the judgement of the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd. (supra). We shall briefly cull out the facts which were involved in the case before the Hon'ble Apex Court. The assessee was a joint Venture between Suzuki Motor Corporation and Maruti Suzuki India Ltd. Initially, the assessee upon incorporation was known as Suzuki Motor India Ltd. Subsequently, w.e.f 8-2-2015, its name was changed to Suzuki Powertrain India Ltd. On 28-11-2012, the assessee had filed its return of income in the name of Suzuki Powertrain India Ltd. (no amalgamation having been taken place on the relevant date). On 29th January, 2013 a scheme for amalgamation of Suzuki Powertrain India Ltd. and Maruti Suzuki India Ltd. was approved by the High court w.e.f 1-4-2012. As per the terms of the approved scheme the liabilities and duties of the transferor company were to stand transferred to the transferee company without any further act or deed. On 2nd April, 2013, Maruti Suzuki India Ltd. intimated the A.O about the amalgamation. The case was selected for scrutiny and a notice under sec. 143(2) of the Act was issued on 26-9-2013, followed by a notice under Sec. 142(1) to the amalgamating company. On 22nd January, 2016, the Transfer Pricing Officer passed an order under sec. 92CA (3) of the Act. On 11th March, 2016, a draft assessment order was passed in the name of Suzuki Powertrain (amalgamated with Maruti Suzuki India ltd.). It is a matter of fact that the assessee viz. Maruti Suzuki India Ltd. had participated in the assessment proceedings of the erstwhile amalgamating entity i.e. Suzuki Powertrain India Ltd. through its authorized representatives and officers. On 14th October, 2016, the DRP issued its order in the name of Maruti Suzuki India Ltd. (as successor in interest of erstwhile Suzuki Powertrain India Ltd. since amalgamated). The final assessment order was passed on 31st October, 2016 in the name of Suzuki Powertrain India Ltd. (amalgamated with Maruti Suzuki India Ltd.). On appeal, the Tribunal 'set aside' the final assessment order on the ground that it was void ab initio having been passed in the name of the non-existent entity by the A.O. The decision of the Tribunal was affirmed by the Hon'ble High Court of Delhi. On further appeal, the Hon'ble Supreme Court dismissed the appeal of the revenue by observing that though the A.O was aware of the fact that the amalgamating company had ceased to exist as a result of the approved scheme of amalgamation, however, the notice was issued in its name. It was observed by the Hon'ble Court that the basis on which the jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Also, it was observed by the Hon'ble Apex Court that participation in the proceedings by the assessee would not operate as an estoppel against law. While observing as hereinabove, the Hon'ble Court had relied on its earlier order in the case of Spice Enfotainment Ltd. (supra), wherein the order of the Hon'ble High Court of Delhi in Spice Enfotainment*

Ltd. v. CIT [IT Appeal No. 475 of 2011, dated 3-8-2011] was affirmed and the SLP filed by the revenue was dismissed. In fact, we find that the Hon'ble Supreme Court in the case of Spice Enfotainment Ltd. (supra), had upheld the order of the Hon'ble High Court of Delhi, which while allowing the appeal of the assessee, had concluded, that where the A.O had framed the assessment in the hands of a non-existent entity, the proceedings and the assessment order so passed would be clearly void and could not be classed as a procedural irregularity of a nature which could be cured by invoking the provisions of sec. 292B of the Act. The Hon'ble High Court of Delhi while concluding as hereinabove had relied on the judgment of the Hon'ble Supreme Court in the case of Saraswati Industrial Syndicate Ltd. v. CIT [1990] 53 taxmann.com 92/186 ITR 278, wherein it was observed, that it was trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. The Hon'ble Supreme Court while concluding as hereinabove had observed as under:—

> *"The question is whether on the amalgamation of the India Sugar Company with the appellant Company, the Indian Sugar Company continued to have its entity and was alive for the purposes of section 41(1) of the Act. The amalgamation of the two companies was effected under the order of the High Court in proceedings under section 391 read with section 394 of the Companies Act. The Saraswati Industrial Syndicate. the trans free Company was a subsidiary of the Indian Sugar Company, namely, the transferor Company. Under the scheme of amalgamation the Indian Sugar Company stood dissolved on 29th October, 1962 and it ceased to be in existence thereafter. Though the scheme provided that the transferee Company the Saraswati Industrial Syndicate Ltd. undertook to meet any liability of the Indian Sugar Company which that Company incurred or it could incur, any liability, before the dissolution or not thereafter.*
>
> *Generally, where only one Company is involved in change and the rights of the share holders and creditors are varied, it amounts to reconstruction or reorganisation or scheme of arrangement. In 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 Halsburys 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."*

On the basis of our aforesaid deliberations, it can safely be concluded that the assessment order passed by the A.O under sec. 143(3) r.w.s 153 r.w.s 144C(4), dated 5-1-2015 in the hands of M/s Satyam Computers Services Ltd., i.e an entity that was non-existent on the date on which the assessment order was passed would thus be non-est in the eyes of law. In fact, as observed by us hereinabove, involving

identical fact situation in the assessee's own case for the immediately succeeding year i.e. A.Y 2011-12, we had quashed the order passed by the Pr. CIT under sec. 263, dated 24-10-2017 on two counts viz. (i) that, the order of revision u/s 263 was passed by the Pr. CIT in the name of M/s Satyam Computers Services Ltd., i.e. a company which was non-existent on the date of passing of the order; and (ii) that, the Pr. CIT in exercise of his power under Sec. 263 was divested on his jurisdiction of revising an assessment order which in itself was non-est in the eyes of law. Accordingly, as per the settled position of law laid down by the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd. (supra) and Spice Enfotainment Ltd. (supra), we are of the considered view that as the assessment order passed in the hands of a non-existent entity viz. M/s Satyam Computer Services Ltd., has no sanctity of law, therefore, the same cannot be sustained and is hereby quashed.

10. *As we have quashed the assessment order for want of jurisdiction, therefore, we refrain from adverting to the merits of the case which having been rendered as academic in nature are thus left open. The additional ground of appeal raised by the assessee is allowed."*

3.9. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation in quashing the assessment framed in the name of non-existent entity. Since, the entire assessment is quashed as void ab initio, the adjudication of regular grounds raised by the assessee on merits is infructuous. Accordingly, the additional ground of the appeal is allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 20/10/2021 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 20/10/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai