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

\+ ITA 115/2019

PR. COMMISSIONER OF INCOME TAX-8 ..... Appellant

Through: Mr. Raghvendra Singh, Adv.

versus

SONY MOBILE COMMUNICATIONS
INDIA PVT. LTD. ..... Respondent

Through: Mr. Nageswar Rao, Ms. Deepika, Agarwal and Ms. Viyushti Rawat, Advs.

AND

\+ ITA 119/2019

PR. COMMISSIONER OF INCOME TAX-8 ..... Appellant

Through: Mr. Raghvendra Singh, Adv.

versus

SONY MOBILE COMMUNICATIONS
INDIA PVT. LTD. ..... Respondent

Through: Mr. Nageswar Rao, Ms. Deepika, Agarwal and Ms. Viyushti Rawat, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 18.05.2021

1. These appeals, impugn the common order dated 6th July, 2018 of the Income Tax Appellate Tribunal (ITAT) (in ITA No.836/Del/2014 for the Assessment Year 2009-10 and in ITA No.554/Del/2015 for the Assessment Year 2010-11, allowing the appeals of the Respondent-Assessee against the separate orders under Section 143(3)/144C, of the Assessing Officer (AO), for the Assessment Years 2009-10 and 2010-11) holding, that

> *"Since the final assessment in the instant case has been made on a non-existent company, therefore, following the*

decisions cited (supra) we hold that the assessment framed by the AO on a non-existent company is a nullity in the eyes of law and void and the provisions of section 292B cannot rescue the department. Therefore, the order is unsustainable and accordingly the same is quashed."

2. Though these appeals came up first before this Court on 4th February, 2019, but notice thereof was ordered to be issued only on 14th November, 2019. The counsels were heard on 1st February, 2021 and 10th February, 2021, on, whether these appeals raise substantial questions of law and are to be admitted for hearing.

3. The ITAT, in the impugned order, has recorded the facts of ITA No.554/Del/2015 for the Assessment Year 2010-11 before it and has further recorded that the facts of ITA No.836/Del/2014 for the Assessment Year 2009-10 are identical. The said facts, as recorded, are (i) that the Respondent-Assessee company is primarily engaged in the business of importing, buying, selling and distributing wide range of mobile phones in India and of providing related post sale support services; (ii) on the Respondent-Assessee filing the return of income for the assessment years 2009-10 and 2010-11 (subject assessment years), since the Respondent-Assessee had undertaken international transaction with its Associated Enterprises (AEs), the AO referred the matter to the Transfer Pricing Officer (TPO) for determination of the Arm's Length Price (ALP) of the international transaction entered into by the Respondent-Assessee with its AE; (iii) the TPO determined upward adjustment of Rs.56,30,78,638/-; (iv) the Respondent-Assessee approached Dispute Resolution Panel (DRP), which declined to interfere with the transfer pricing adjustment made by the AO; (v) the Respondent-Assessee thereafter approached the ITAT and the

ITAT gave part relief to the Respondent-Assessee; (vi) both, the Respondent-Assessee as well as the Appellant-Revenue approached this Court by way of ITA No.638/Del/2015 and ITA No.614/Del/2015 respectively; (vii) this Court, vide order dated 28th January, 2016 restored the matter to the ITAT, with certain directions; and, (viii) the Respondent-Assessee, in said second round before the ITAT, made an application under Rule 11 of the ITAT Rules, 1963, seeking admission of the additional ground of appeal i.e. that "the assessment order passed under Section 143(3) read with section 144C of the Act is void *ab initio*, as the assessment was undertaken in the name of non-existent entity."

4. ITAT, vide the impugned order, has held, that (i) since all material necessary for adjudication of the additional ground was available on record and no fresh examination of facts was required to be undertaken, the additional ground raised by the Respondent-Assessee was entitled to be admitted for adjudication; (ii) the Respondent-Assessee filed its return of income for the subject assessment years, in the name of Sony Ericsson Mobile Communications (India) Pvt. Ltd. (iii) the name of the Respondent-Assessee, w.e.f. 18th April, 2012, was changed to Sony Mobile Communications (India) Pvt. Ltd.; (iv) Sony Mobile Communications (India) Pvt. Ltd., w.e.f. 1st April, 2013, was merged with Sony India Pvt. Ltd.; (v) the Appellant-Revenue, vide letter dated 6th December, 2013 was informed of the merger; (vi) the factum of merger was also mentioned in another letter dated 17th February, 2014 of the Respondent-Assessee to the Appellant-Revenue; (vii) however notwithstanding the aforesaid, the AO passed the draft assessment order dated 31st March, 2014, in the name of Sony Ericsson Mobile Communications (India) Pvt. Ltd.; (viii) the

Respondent-Assessee, in response to the department's allegation that no intimation about merger was made, wrote a letter dated 30th April, 2014; (ix) the DRP, in its order dated 21st October, 2014 mentioned the name of the Respondent-Assessee as "Sony Mobile Communications (India) Private Limited (now merged with Sony India Private Ltd)".; (x) however the AO still passed the final assessment order under Section 143(3)/144C in the name of Sony Ericsson Mobile Communications (India) Pvt. Ltd.; (xi) thus, the final order was framed on a non-existent company and the question for adjudication was, whether the said defect was curable or made the final assessment order void; (x) in (a) ***Pr. Commissioner of Income Tax-6 New Delhi Vs. Maruti Suzuki India Limited (Successor of Suzuki Powetrain India Limited)*** (2017) 397 ITR 681 (Delhi), (b) ***Spice Entertainment Limited Vs. Commissioner of Income Tax*** (2012) 247 CTR (Delhi) 500 (Civil Appeal 285/2014 whereagainst was dismissed on 2nd November, 2017), (c) ***Commissioner of Income Tax Vs. Dimension Apparels (P) Ltd.*** (2015) 370 ITR 288 (Civil Appeal 4317/2014 whereagainst was dismissed on 2nd November, 2017), (d) ***Commissioner of Income-Tax Vs. Norton Motors*** (2005) 275 ITR 595 (Punjab & Haryana High Court), (e) ***CIT Vs. Harjinder Kaur*** (2009) 222 CTR (P&H) 254 and (f) ***Sri Nath Suresh Chand Ram Naresh Vs. Commissioner of Income Tax*** (2006) 280 ITR 396 (All), it had been held that such a defect cannot be treated as a procedural one and once it is found that the assessment is framed in the name of a non-existent entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292B of the Income Tax Act, 1961 (the Act); and, (xi) thus the assessment orders framed by the AO on a non-existent company were a nullity in the eyes of law and

void and the provisions of Section 292B could not rescue the appellant department.

5. The counsel for the Appellant-Revenue urged two substantial questions for our consideration. Firstly, it was contended that the ITAT erred in allowing the additional ground to be urged by the Respondent-Assessee; it was argued that the remand by this Court, vide order dated 28th January, 2016 in ITA No.638/Del/2015, filed by the Respondent-Assessee, and ITA No.614/Del/2015, filed by the appellant revenue, to the ITAT, was a limited remand and ITAT did not have the jurisdiction to enlarge the scope of enquiry beyond the directions issued by this Court. The second substantial question of law urged was, that the ratio of ***Pr. Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.*** (2019) 416 ITR 613 (SC) is, that since the notice under Section 143(2) of the Act, under which jurisdiction was assumed by the AO, was issued to a non-existent company, the assessment order issued against the amalgamating company was void and not a procedural violation of the nature adverted to in Section 292B of the Act. It was contended that the facts of the present case are different and thus the ratio of ***Maruti Suzuki India Ltd.*** (supra) is not applicable. It was further contended that in the present case, till the issuance of notice under Section 143(2) of the Act, the name of the assessee had not changed and the notice was issued in the correct name and the error, even if any in the name of the Respondent-Assessee in the assessment order, is an error which is within the jurisdiction of the AO and which is correctable. Additionally, it was informed that in ***Maruti Suzuki India Ltd.*** (supra), the appeal before this Court had been filed in the name of the amalgamated company but in the present case, the Respondent-Assessee also filed ITA No. 638/Del/2015

against the earlier order dated 27th February, 2015 of the ITAT, in the old name in which return of income was filed, notwithstanding the subsequent change in name and amalgamation. Attention was also invited to Section 144C(10) of the Act, to contend that the order of the DRP is binding on the AO; the DRP, in the present case passed the order in the old name in which return was filed, though mentioning that the Respondent-Assessee had since been amalgamated in another company and thus the AO had no option but to pass the assessment order in the same name in which the DRP had passed the order, albeit without mentioning the fact of amalgamation of the Respondent-Assessee. It was further pointed out, that the identification of the Respondent-Assessee by the appellant department, is by the Permanent Account Number (PAN) and inexplicably the PAN of the Respondent-Assessee which had filed the return of income and the PAN of the amalgamated company is the same. Attention was drawn to Section 139A of the Act, defining PAN.

6. Per contra the counsel for the Respondent-Assessee contended that no substantial question of law arises, since the question urged already stands settled by the authoritative dicta in ***Maruti Suzuki India Ltd.*** (supra). It was argued, that the principle of certainty in tax litigation is supreme and in tax jurisdiction, minor differences in facts are irrelevant and should not be allowed to unsettle the law and which if done, would lead to chaos.

7. We enquired from the counsel for the Respondent-Assessee, what was the prejudice suffered by the Respondent-Assessee from the assessment order being in the wrong name, especially when the Respondent-Assessee itself filed the earlier ITA No. 638/2015 in the same name and which appeal was disposed of vide order dated 27th February, 2015 and why, even if the

said assessment in earlier name is wrong, direction for the assessment to be done again, cannot be issued.

8. The counsel for the Respondent-Assessee contended, that all these aspects have already been considered in ***Maruti Suzuki India Ltd.*** (supra) and it is not open to this Court to raise the same again.

9. As far as the second substantial question of law urged by the counsel for the Appellant/Revenue is concerned, we are of the view that the differences aforesaid in the facts of the present case, from that of ***Maruti Suzuki India Ltd.*** (supra), are material and it requires consideration, by framing a question of law, whether the said differences in facts make the dicta in ***Maruti Suzuki India Ltd.*** (supra) not binding as far as the present appeals are concerned. It cannot be lost sight of, that a judgment is a precedent on what was for adjudication and not on what may reasonably be inferred therefrom. However at this stage nothing further needs to be said on this aspect, save referring to a recent dicta of a co-ordinate Bench of this Court in ***Savita Kapila Vs. Assistant Commissioner of Income Tax*** (2020) 426 ITR 502 (Delhi), also holding in the facts of that case, that the notice under Section 148 of the Act being the foundation of reopening of an assessment, issuance of notice in the correct name is the *sine qua non* for acquiring jurisdiction to reopen an assessment. It was further held that Section 159 title 'Legal Representatives' applies to a situation where proceedings are initiated/pending against the assessee when alive, and that issuance of a notice upon a dead person does not come under the ambit of mistake, defect or omission within the meaning of Section 292B of the Act . Applying the said judgment also, it appears that the jurisdictional notice in the present case having been issued in the correct name, merely because the

assessment order did not mention the subsequently changed name, is not fatal.

10. We may also mention, that Section 23 titled "Registration of change of name and effect thereof" of Companies Act, 1956 (1956 Act), in sub-section (3) thereof provided that the change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name. In the Companies Act, 2013 (2013 Act), Section 13 titled "Alteration of memorandum", in sub-section (2) only provides that any change in the name of a company shall be subject to the provisions of sub-sections (2) and (3) of Section 4, and is not found by us, just now, to be containing any provision equivalent to Section 23 of the 1956 Act. However, we find that the said Section 13 of the 2013 Act came into force only on 1st April, 2014 and we are also unable to, just now, gauge the reasons, if any, which prevailed with the legislature for not including a *pari materia* provision to Section 23 of the 1956 Act, in the 2013 Act.

11. We are also of the view that any scheme of merger/amalgamation ordinarily provides for the liabilities of the amalgamating company to be of the amalgamated company and/or with respect to continuation of proceedings. In the civil law also, a proceeding in a wrong name and/or in an earlier name, is an irregularity and not fatal. Reference in this regard may be made to ***Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon*** (1969) 1 SCC 869, ***Pioneer Protective Glass Fibre P. Ltd Vs. Fibre Glass Pilkington Ltd.*** (1986) 60 CompCas 707 (Cal) and

Amulakchandd Mewaram Vs. Babulal Kanalal Taliwala 1933 SCC OnLine Bom 72.

12. Though in the present case, the AO has made additions to the income of the Respondent-Assessee but we have wondered what would be the position if it was a refund which was due to a company; whether the said refund also would be appropriated by the Appellant-Revenue, if the application for refund is made in the old name and the refund order is passed in the old name.

13. We would also like to hear the counsels on, whether on change of name, any application for substitution was required to be made in the assessment proceedings and if so, on whom was the onus thereof.

14. We have also wondered, that if the consequences of change of name/amalgamation are to be such as held by the ITAT, what is the sanctity of the remand order dated 28th January, 2016 and whether the challenge in ITA No.638/Del/2015 filed in the old name itself was bad and the order dated 27th February, 2015 of the ITAT in the first round thus stands and there was no remand to the ITAT.

15. In the present case, when the change of name of the assessee from Sony Ericsson Mobile Communications India Pvt. Ltd. to Sony Mobile Communications India Pvt. Ltd. was effected on 18th April, 2012, Section 23(3) of the 1956 Act was in force. Similarly, when the merger of Sony Mobile Communications India Pvt. Ltd. into Sony India Pvt. Ltd. took place with effect from 1st April, 2013, Section 23(3) of the 1956 Act was still in force.

16. We also do not have before us, the communications dated 6th December, 2013 and 17th February, 2014 by which the Respondent-Assessee

is stated to have informed the AO of the change of name and are thus unable to gauge whether they were in relation to proceedings for assessment of the relevant year or in general.

17. We are therefore of the view that the second question of law urged by the counsel for the Appellant/Revenue, arises and requires to be considered in the facts of the present case.

18. However as far as the first substantial question of law urged by the counsel for the Appellant-Revenue is concerned, we find that this Court, vide judgment dated 28th January, 2016 in ITA No.638/2015 and ITA No.614/2015, while setting aside the order dated 27th February, 2015 of ITAT, directed the ITAT to decide the appeal "afresh in light of the directions issued and to examine all the grounds including the one regarding the existence of an international transactions involving AMP expenses". The aforesaid direction cannot be said to be of limited remand and was of open remand and thus we are of the opinion that the ITAT was entitled to allow the additional ground to be urged before it and to allow the appeal solely on the basis thereof. Thus the first substantial question of law urged does not arise.

19. The counsels are at liberty to file additional documents, within six weeks.

20. List on, 27th July, 2021 for framing of the question of law and on 24th August, 2021, for hearing.

SANJEEV NARULA, J.

21. Having gone through the judgment of my learned colleague Rajiv Sahai Endlaw, J, I am unable to agree with the conclusions reached by him.

22. As noted above, the Revenue has urged two substantial questions of

law for our consideration. In so far as the first question of law concerning the scope of enquiry by the ITAT arising out of a remand by this Court is concerned, I am in complete agreement with the conclusion drawn by my esteemed colleague. In addition to the reasoning given, I would like to add that the additional ground of appeal urged by the Respondent–Assessee was purely legal, arising from the facts which were already on record in the assessment proceedings. In these circumstances, I see no good reason to deny the Respondent–Assessee the opportunity to urge a new legal ground dealing with a jurisdictional issue, as it goes to the root of the matter and is necessary to be considered in order to correctly assess the tax liability of an assessee. Therefore, the said question does not arise for our consideration in the present appeal.

23. This brings us to the second question where I have a difference of opinion. In the first round of appeal, this Court remitted the matter to the learned ITAT with a direction to pass the order afresh in light of its ruling dated 16th March 2015 in *M/s Sony Ericsson Mobile Communications (India) Pvt. Ltd. Vs. CIT*, (2015) 374 ITR 118 (Del). Upon restoration, the ITAT, instead of considering the issue of ALP expenses and adjudicating upon the validity of related TP adjustment by the TPO, decided and allowed the appeal on the sole ground that the assessment order passed under Section 143(3) read with section 144C of the Act is void *ab initio* as the assessment was undertaken in the name of a non-existent entity. It was observed that the draft assessment order was passed on 31st March, 2014 in the name of M/s Sony Ericsson Mobile Communications (India) Pvt. Ltd. The above noted company, (renamed Sony Mobile Communications (India) Pvt. Ltd. w.e.f. 18th April, 2012), had merged with M/s Sony India Pvt. Ltd. w.e.f. 1st April,

2013, after the High Court approved the scheme of amalgamation on 23rd July, 2013. The Respondent had sent intimation to the Department informing it of the amalgamation of M/s Sony Mobile Communications (India) Pvt. Ltd. with Sony India Pvt. Ltd. The ITAT observed that the DRP in its order dated 21st October, 2014, mentioned the name of the Assessee as "M/s Sony Mobile Communications (India) Pvt. Ltd. (now merged with Sony India Pvt. Ltd)". Nevertheless, the Assessing Officer (AO) passed the final assessment order under Section 143(3) of the Act dated 22nd December, 2014, and framed the final assessment under 143(3)/144C, in the name of "M/s Sony Mobile Communications (India) Pvt. Ltd". The final order was therefore framed on a non-existent company. In these circumstances, the ITAT delved into the question of whether such framing of the final order passed by the Assessing Officer (AO) was a curable defect or a void order. The ITAT, placing reliance upon: (i) the judgment of this court in ***Spice Entertainment Limited v. CIT***, 2012 (280) ELT 43 (Del.) :MANU/DE/3382/2011;[1] (ii) the dismissal of the appeal of the Revenue against the said judgment by the Supreme Court;[2] and (iii) the decision of this Court in ***Commissioner of Income Tax Vs. Dimension Apparels (P) Ltd.,*** 370 ITR 288; concluded that since the assessment in the instant case had been made on a non-existent company, it was a nullity in the eyes of law, and the provisions of section 292B cannot rescue the department. The appeal of the Respondent–Assessee was thus allowed on this legal ground, and the other grounds urged by the Respondent–Assessee, rendered academic in nature, were not adjudicated.

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[1] Also referred to as ***Spice Enfotainment v. CIT*** in (2012) 247 CTR (Del) 500.
[2] In Civil Appeal No. 285 of 2014 titled ***CIT v. Spice Enfotainment Ltd.*** *vide* order dated 2nd November, 2017, reported at 2017 SCC OnLine SC 1912.

24. Subsequent to the decision of the ITAT, the Apex Court in the case of ***Pr. Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.,*** (2019) 416 ITR 613 (SC), authoritatively dealt with and answered the question of law which is now sought to be urged by the Revenue before us. It held that the assessment order framed in the name of a non-existent entity, in spite of receiving intimation that the amalgamating company ceased to exist as a result of the approved scheme of amalgamation, went to the root of the matter and was not a defect capable of being cured under Section 292B. In view thereof, the impugned order of the ITAT calls for no interference. Revenue urges the second substantial question of law for entertaining the present appeal, by contending that the facts of the instant case are quite different from those that fell for consideration in ***Maruti Suzuki India Limited*** (*supra*), and therefore the ratio of the said decision is not applicable here. On this aspect, Revenue has laid considerable stress on the issuance of the notice under Section 143(2) of the Act, by urging that in the instant case, at the stage of assumption of jurisdiction by issuance of the notice, the name of the assessee had not changed and the notice was issued in the correct name. The error in the name of the assessee at the stage of issuance of the assessment order, was thus curable. This distinguishing fact, in my considered opinion, does not help the Revenue at all. The judgment of the Supreme Court in ***Maruti Suzuki India Limited*** (*supra*), laid down the law with respect to assessment orders which have been framed in the name of the entity which stood amalgamated under the approved scheme of amalgamation. The Apex Court has dealt with several judgments on this aspect and also considered the earlier judgment of this Court in ***Spice Entertainment Limited*** (*supra*). Besides, the Supreme Court also considered

the contention of the Revenue therein that a contrary position had been taken by this Court in ***Skylight Hospitality LLP Vs. ACIT***, (2018) 405 ITR 296, but negated the same, holding that there was no conflict between the decisions in ***Spice Entertainment*** (*supra*) on the one hand and ***Skylight Hospitality LLP*** (*supra*) on the other hand.

25. In ***Maruti Suzuki India Limited*** (*supra*), the notice under Section 143(2), under which jurisdiction was assumed by the Assessing Officer (AO), was undoubtedly issued to a non-existent company. However, as pointed out by the counsel of the Respondent-Assessee, the situation was no different in the case of ***Spice Entertainment*** (*supra*). Therein, the factual situation was as follows: Spice Corp. Ltd. was the amalgamating company. It's filed its return of income on 30th October, 2002 declaring nil income. Subsequently *vide* order dated 11th April, 2004 passed by this Court, the said company stood amalgamated with M/s MCorp Pvt. Ltd. w.e.f 1st July, 2003. The return was selected for scrutiny and notice dated 18th October, 2003 was issued by the Assessing Officer (AO) under Section 143(2) of the Act in the name of Spice Corp. Ltd., the amalgamating company. Thus, even in the said case, the notice assuming jurisdiction under Section 143(2) of the Act was issued correctly in the name of amalgamating company, as on the date of issuance, the company had not been dissolved. Yet, the court held that the assessment framed in the name of non-existent entity is not a procedural irregularity which could be cured by invoking the provisions of Section 292B of the Act. It is also pertinent to note the final observations made in the said judgment, which clarify this aspect:

> *"18. We may, however, point out that the returns were filed by M/s Spice on the day when it was in existence it would be permissible to carry out the assessment*

on the basis of those returns after taking the proceedings afresh from the stage of issuance of notice under Section 143 (2) of the Act. In these circumstances, it would be incumbent upon the AO to first substitute the name of the appellant in place of M/s Spice and then issue notice to the appellant. However, such a course of action can be taken by the AO only if it is still permissible as per law and has not become time barred."

26. In my view, the decisive and critical aspect is the intimation of the factum of dissolution of the amalgamating company. In ***Spice Entertainment*** (*supra*), this fact was brought to the notice of the Assessing Officer (AO) by the amalgamated company on 2nd April, 2004. However, despite the said intimation, the Assessing Officer (AO) *vide* order dated 28th March, 2005 passed the order under Section 143(3) of the Act and framed the assessment in the name of Spice Corp. Ltd., the amalgamating company, which admittedly had been dissolved as on that date. Even in the case of ***Maruti Suzuki India Limited*** (*supra*), the Court noted this crucial aspect - that the Assessing Officer was informed that the amalgamating company ceased to exist as a result of the approved scheme of amalgamation.

27. In the instant case as well, the ITAT has specifically noted that the Respondent-Assessee had sent an intimation on 6th December, 2013, informing the Department of the fact of amalgamation of Sony Mobile Communications (India) Pvt. Ltd. with Sony India Pvt. Ltd. Further, on 17th February, 2014, another letter was sent to the Department where the facts of the amalgamation were mentioned. Despite that, the draft assessment order was issued by the AO in the name of the non-existent amalgamating company. Furthermore, on 30th April, 2014, the Respondent-Assessee sent another letter to the department in response to the allegation of the department that no intimation about the amalgamation was made. Yet, the DRP passed its order dated 21st October, 2014 in the name of "Sony Mobile

Communications (India) Pvt. Ltd. (now merged with Sony India Pvt. Ltd)". In this factual background, since the Respondent-Assessee had repeatedly intimated the department of the factum of amalgamation, the final assessment order made on a non-existent entity is a nullity in the eyes of law, and therefore void. The intimation of the amalgamation, as noted by the ITAT in the impugned order, was not assailed by the Revenue in their Memorandum of Appeal.

28. The position in law, with respect to the effect of an assessment order in the name of a non-existent company, is now well-settled in view of the decision of the Supreme Court in ***Maruti Suzuki India Limited*** (*supra*) and ***Spice Entertainment Limited*** (*supra*). The attempt made by the Revenue to distinguish the case of ***Maruti Suzuki India Limited,*** (*supra*), in my opinion, cannot be countenanced.

29. The other distinctive fact sought to be highlighted by the Revenue, is also of no consequence. The Revenue has contended that the Respondent-Assessee had filed ITA No.638/Del/2015 against the earlier order dated 27th February, 2015 in the name of the amalgamated non-existent company, in which return of income was filed, notwithstanding the subsequent change of name by amalgamation. The DRP had also passed the order in the name of the erstwhile entity in which the return was filed, and it is contended by the Department that since the same is binding on the AO, there was no other option but to pass the assessment order in the same name in which the DRP had passed the order. This argument, in itself, does not inspire confidence. The AO could not have ignored the intimation of the amalgamation. Moreover, the challenge by the amalgamated company to the assessment order, or its participation in the assessment proceedings, cannot not infuse

fresh life into the assessment order that is void *ab initio*. As observed in ***Maruti Suzuki India Limited*** (*supra*), there cannot be any estoppel against the law. If the legal effect of such an order results in a nullity, then the filing of the appeal by the Respondent-Assessee in the name of the defunct entity would not cure the legal defect. For this reason, it has been held to be not a mere procedural irregularity, but a jurisdictional defect.

30. Lastly, there is merit in the argument that minor differences in facts are irrelevant in tax litigation, and the canon of certainty in taxation ought to be respected in order to ensure uniformity. The Supreme Court also opined on this aspect in ***Maruti Suzuki India Limited,*** (*supra*), which is extracted as follows:

> *"34. 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 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 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."*

31. In view of the above, since all the aspects sought to be urged by the Revenue have been considered and dealt with in ***Maruti Suzuki India Limited,*** (*supra*), ***and Spice Entertainment*** in my considered opinion, the substantial question of law as sought to be urged by the Revenue, does not arise for consideration. There is no significant distinguishing factor which has been brought to light by the Revenue to disregard the decision in ***Maruti Suzuki India Limited***, (*supra*). The present appeals have no merit and the same are liable to be dismissed.

We have wondered the future course of action in view of difference of opinion aforesaid. The tradition of this Court is, that in the event of difference of opinion, between Judges of the Division Bench, on whether a notice of appeal is to be issued, notice is to be issued. Since the difference of opinion here, is on whether a substantial question of law arises, we are of the view that as per the said tradition, the question of law has to be framed and appeal admitted. Further, since the date of hearing, the roster of this Court has changed. Subject to orders of Hon'ble the Chief Justice, list before the roster Bench on 27th July, 2021.

RAJIV SAHAI ENDLAW, J

SANJEEV NARULA, J

MAY 18, 2021
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