Moonlight Equity Private Limited ... vs Union Of India & Ors on 30 January, 2025

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 6443/2023
MOONLIGHT EQUITY PRIVATE LIMITED (SUCCESSOR
TO INDO CREDIOP PRIVATE LIMITED) .....P
Through: Mr. Mani Bhadra Jain, Mr.
Dipesh Sharma & Mr. Sushan
Singhal, Advs.
versus
UNION OF INDIA & ORS. .....Respon
Through: Mr. Niraj Kumar, SCGC with
Mr. Chaitanya Kumar, Advs.
for R-1.
Mr. Gaurav Gupta, SSC, Mr.
Shivendra Singh & Mr. Yoji
Pareek, JSCs. For R-2 & R-

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR
ORDER

% 30.01.2025

1. The present writ petition impugns the notice dated 27 July 2022 issued under Section 148 of the Income Tax Act, 19611 and pertaining to Assessment Year2 2014-15.

2. The challenge, which is principally mounted, is based on our decision in International Hospitals Limited. vs. DCIT Circle 12(2)3 and proceeds on the ground that the order under Section 148A(d) as well as the consequential notice under Section 148, have come to be framed in the name of a transferor entity and which had clearly ceased to exist on the relevant date.

Act AY 2024 SCC OnLine Del 6730 This is a digitally signed order.

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3. For the purpose of evaluating the challenge which stand raised, we deem it apposite to take note of the following essential facts. The proceedings under Section 148 commenced with the issuance of

a notice dated 30 June 2021 which was drawn in the name of Indo Crediop Private Limited4. Soon thereafter and more particularly on 25 August 2021, the Principal Bench of the National Company Law Tribunal5 accorded sanction to a Scheme of Arrangement in terms of which Indo Crediop came to be merged with Moonlight Equity Private Limited.

4. The respondents, who had proceeded to issue the original notice under Section 148 on 30 June 2021, had admittedly adhered to the procedure which prevailed prior to the commencement of Finance Act, 2021. In light of the decision of the Supreme Court which came to be handed down in the matter of Union of India vs. Ashish Agarwal6, a remedial notice referable to Section 148A(b) of the Act came to be issued thereafter on 18 May 2022. As would be manifest from a reading of that notice, the respondents specifically alluded to the judgment of the Supreme Court in Ashish Agarwal. However, the said notice continued in the name of Indo Crediop.

5. The petitioner, while filing its reply to the aforesaid notice and more particularly in terms of its communication of 02 June 2022, specifically brought to the attention of the respondents the factum of merger, as evident from the reading of paragraph 3(vii) of that response and which is extracted hereinbelow:-

> □(vii) We may also submit here that the assessee company has merged with Moonlight Equity Private Limited (PAN:
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> AAACD3099D) w.e.f. 31.08.2019 (the appointed date) vide order Indo Crediop NCLT (2023) 1 SCC 617 This is a digitally signed order.

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6. Despite that disclosure being made, the respondents proceeded to frame a final order under Section 148A(d) as well as to issue the notice under Section 148, both drawn in the name of Indo Crediop.

7. We had while dealing with a similar situation in International Hospital, and on a review of the legal precedents rendered on the subject including the decisions of the Supreme Court in Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki (India) Limited7 and Principal Commissioner of Income Tax (Central)-2 vs. Mahagun Realtors (P) Ltd.8 held as follows:-

> □3. According to the writ petitioners, the challenge on grounds noticed above is no longer res integra and stands conclusively answered by the Supreme Court in Maruti Suzuki. It becomes pertinent to note that the judgment of the Supreme Court in Maruti Suzuki had come to be rendered on an appeal which arose from a judgment of this Court and which while upholding the decision rendered by the Tribunal had held that an assessment made in the name of Suzuki Powertrain India Ltd., and which had

> evidently under an approved Scheme amalgamated with Maruti Suzuki India Ltd., was a nullity. On facts it emerged that MSIL had duly intimated the AO of the amalgamation prior to the case being selected for scrutiny assessment. Notwithstanding that information being available, the AO appears to have framed a draft assessment order in the name of SPIL.
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> 17. In Maruti Suzuki it appears to have been urged by and on behalf of the Revenue that the decision in Spice Entertainment would not hold good in light of the decision which our High Court had pronounced in Sky Light Hospitality and which had come to be affirmed by the Supreme Court. Dealing with the aforesaid contention, the Supreme Court in Maruti Suzuki observed as follows:
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> □28. The submission, however, which has been urged on behalf of the Revenue is that a contrary position emerges from the decision of the Delhi High Court in Skylight Hospitality LLP [Skylight Hospitality LLP v. CIT, 2018 (2020) 18 SCC 331 2022 SCC OnLine SC 407 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 23:37:58 SCC OnLine Del 7155 : (2018) 405 ITR 296] which was affirmed on 6-4-2018 [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] by a two-Judge Bench of this Court consisting of Hon'ble Mr. Justice A.K. Sikri and Hon'ble Mr. Justice Ashok Bhushan. In assessing the merits of the above submission, it is necessary to extract the order dated 6-4-2018 [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] of this Court : (Skylight Hospitality case[Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147], SCC p. 147, para 1) □1. In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292-B of the Income Tax Act. The special leave petition is dismissed.

Pending applications stand disposed of. Now, it is evident from the above extract that it was in the peculiar facts of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 292-B. The □peculiar facts of Skylight Hospitality emerge from the decision of the Delhi High Court [Skylight Hospitality LLP v. CIT, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296]. Skylight Hospitality, an LLP, had taken over on 13-5-2016 and acquired the rights and liabilities of Skylight Hospitality Pvt. Ltd. upon conversion under the Limited Liability Partnership Act, 2008 (the LLP Act, 2008). It instituted writ proceedings for challenging a notice under Sections 147/148 of the 1961 Act dated 30-3-2017 for AY 2010-2011. The □reasons to believe made a reference to a tax evasion report received from the investigation unit of the Income Tax Department. The facts were ascertained by the investigation unit. The reasons to believe referred to the assessment order for AY 2013-2014 and the findings recorded in it. Though the notice under Sections 147/148 was issued in the name of Skylight Hospitality Pvt. Ltd. (which had ceased to exist upon conversion into an LLP), there was, as the Delhi High Court held □substantial and affirmative material and evidence on record to show that

the issuance of the notice in the name of the dissolved company was a mistake. The tax evasion report adverted to the conversion of the private limited company into an LLP. Moreover, the reasons to believe recorded by the assessing officer adverted to the approval of the Principal Commissioner. The PAN number of LLP was also mentioned in some of the documents. The notice under Sections 147/148 was not in conformity with the reasons This is a digitally signed order.

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> (2018) 405 ITR 296], SCC OnLine Del para 18) ❑18. ... There was no doubt and debate that the notice was meant for the petitioner and no one else.

Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11-4-2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s. Skylight Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused.

29. The decision in Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] was distinguished with the following observations : (Skylight Hospitality case [Skylight Hospitality LLP v. CIT, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296], SCC OnLine Del para

19) ❑19. Petitioner relies on Spice Infotainment v. CIT [This judgment has also been referred to as Spice Infotainment Ltd. v. CIT, (2012) 247 CTR 500 (Del)]. Spice Corp. Ltd., the company that had filed the return, had amalgamated with another company. After notice under Sections 147/148 of the Act was issued and received in the name of Spice Corp. Ltd., the assessing officer was informed about amalgamation but the assessment order was passed in the name of the amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of assessment order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice under Sections 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provisions of the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 23:37:58 Companies Act. Order was in the name of non-

existing person and hence void and illegal.

30. From a reading of the order of this Court dated 6-4- 2018 [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] in the special leave petition filed by Skylight Hospitality LLP against the judgment of the Delhi High Court rejecting its challenge, it is evident that the peculiar facts of the case weighed with this Court in coming to this conclusion that there was only a clerical mistake within the meaning of Section 292-B. The decision in Skylight Hospitality LLP [Skylight Hospitality LLP v. CIT, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296] has been distinguished by the Delhi, Gujarat and Madras High Courts in:

> (i) Rajender Kumar Sehgal [Rajender Kumar Sehgal v. CIT, 2018 SCC OnLine Del 12890];
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> (ii) Chandreshbhai Jayantibhai Patel [Chandreshbhai Jayantibhai Patel v. CIT, 2018 SCC OnLine Guj 4812]; and
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> (iii) Alamelu Veerappan [Alamelu Veerappan v. CIT, 2018 SCC OnLine Mad 13593].

31. There is no conflict between the decisions of this Court in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] (dated 2-11- 2017) and in Skylight Hospitality LLP v. CIT [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] (dated 6-4-2018).

18. Arguments flowing on lines similar to those which were addressed before us in this batch appear to have been urged before the Supreme Court in Maruti Suzuki with it being argued that a notice in the name of a company which stood dissolved would be a curable mistake and that in any case, Section 170 of the Act would save those notices. This becomes apparent from a reading of paragraphs 32 and 33 of the report which are extracted hereinbelow:

> 32. Mr. Zoheb Hossain, learned counsel appearing on behalf of the Revenue urged during the course of his submissions that the notice that was in issue in Skylight Hospitality Pvt. Ltd. was under Sections 147 and 148. Hence, he urged that despite the fact that the notice is of a jurisdictional nature for reopening an assessment, this Court did not find any infirmity in the decision of the Delhi High Court holding that the issuance of a notice to an erstwhile private limited company which had since been dissolved was only a mistake curable under Section 292-B. A close reading of the order of this Court dated 6- 4-2018 [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147], however indicates that what weighed in the dismissal of the special leave petition were the peculiar facts of the case. Those facts have been noted above. What had weighed with the Delhi High Court was that though the notice to reopen had been issued in the name of the erstwhile entity, all the material on record

including the tax evasion report suggested that there was no manner of doubt that the notice was always intended to be issued to the successor entity. Hence, while dismissing the special leave petition this Court observed that it was the peculiar facts of the case which led the Court to accept the finding that the wrong name given in the notice was merely a technical error which could be corrected under Section 292-B. Thus, there is no conflict between the decisions in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] on the one hand and Skylight Hospitality LLP [Skylight Hospitality LLP v. CIT, (2018) 13 SCC 147] on the other hand. It is of relevance to refer to Section 292-B of the Income Tax Act which reads as follows:

□292-B. Return of income, etc., not to be invalid on certain grounds.--No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act. 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 292-B.

33. In this context, it is necessary to advert to the provisions of Section 170 which deal with succession to business otherwise than on death. Section 170 provides as follows:

□170. Succession to business otherwise than on death.--

(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 This is a digitally signed order.

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(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. Explanation.--For the purposes of this section, □income includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession.

19. The Supreme Court in Maruti Suzuki ultimately held:

> □36. 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 Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] on 2-11-2017. The decision in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] 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 Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353].

37. 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 AY 20122013. 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. ****

21. A few years after Spice Entertainment, a similar question arose yet again in Sky Light Hospitality. Our Court on that occasion came to the conclusion that the mistake in that particular case was a technical error which could be attended to and saved by virtue of Section 292B of the Act. However, and as the Supreme Court itself had an occasion to note in Maruti Suzuki, the Court while coming to hold that Section 292B would apply, had pertinently observed that the material on record was indicative of the Revenue having always intended the notice to be addressed to the successor entity. It becomes pertinent to note that the Court in Sky Light Hospitality had alluded to "substantial and affirmative material and evidence on record" which indicated that the issuance of the notice in the name of the dissolved entity was a mistake. In arriving at that conclusion, it had not only borne in consideration the material which existed on the record as also the tax evasion report which had duly taken note of the conversion of the Private Limited Company into an LLP. It is thus apparent that Sky Light Hospitality came to be rendered in its own peculiar facts. It was in the aforesaid factual backdrop that the Supreme Court in Maruti Suzuki ultimately came to hold that there was no apparent conflict This is a digitally signed order.

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22. However, the sheet anchor of the submission of the respondents was, as noticed in the prefatory parts of this decision, the judgment in Mahagun Realtors. However, and as was noticed by a Division Bench of our Court in Commissioner of Income Tax v. Sony Mobile Communications India Pvt. Ltd.21, and which decision we shall advert to a little later, that decision of the Supreme Court itself turned upon the facts of that particular case.

23. In Mahagun Realtors, while expounding upon the effect of merger of two corporate entities consequent to a Scheme of Arrangement being sanctioned, the Supreme Court pertinently observed:--

> ☐18. Amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues - enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence, i.e., the

transferee-company. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. There are analogies in civil law and procedure where upon amalgamation, the cause of action or the complaint does not per se cease-depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall. ****

27. After copiously taking note of the disclosures which were made in the course of assessment, it found that the following salient facts emerged in the case of Mahagun Realtors:--

□40. The facts of the present case are distinctive, as evident from the following sequence: □1. The original return of MRPL was filed under section 139(1) on June 30, 2006.

2. The order of amalgamation is dated May 11, 2007 - but made effective from April 1, 2006. It contains a condition- clause 2 - whereby MRPL's liabilities devolved on MIPL.

3. The original return of income was not revised even though the assessment proceedings were pending. The last date for filing the revised returns was March 31, 2008, after the amalgamation order.

4. A search and seizure proceeding was conducted in This is a digitally signed order.

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(i) When search and seizure of the Mahagun group took place, no indication was given about the amalgamation.

(ii) A statement made on March 20, 2007 by Mr. Amit Jain, MRPL's managing director, during statutory survey proceedings under section 133A, unearthed discrepancies in the books of account, in relation to amounts of money in MRPL's account. The specific amount admitted was Rs. 5.072 crores, in the course of the statement recorded.

(iii) The warrant was in the name of MRPL. The directors of MRPL and MIPL made a combined statement under section 132 of the Act, on August 27, 2008.

(iv) A total of Rs. 30 crores cash, which was seized - was surrendered in relation to MRPL and other transferor companies, as well as MIPL, on August 27, 2008 in the course of the admission, when a statement was recorded under section 132(4) of the Act, by Mr. Amit Jain.

5. Upon being issued with a notice to file returns, a return was filed in the name of MRPL on May 28, 2010. Before that, on two dates, i.e., July 22/27, 2010, letters were written on behalf of MRPL, intimating about the amalgamation, but this was for the assessment year 2007- 2008 (for which separate proceedings had been initiated under section 153A) and not for the assessment year 2006-2007.

6. The return specifically suppressed - and did not disclose the amalgamation (with MIPL) - as the response to query 27(b) was ☐N.A.'.

7. The return - apart from specifically being furnished in the name of MRPL, also contained its permanent account number.

8. During the assessment proceedings, there was full participation-on behalf of all transferor companies, and MIPL. A special audit was directed (which is possible only after issuing notice under section 142). Objections to the special audit were filed in respect of portions relatable to MRPL.

9. After fully participating in the proceedings which were specifically in respect of the business of the erstwhile MRPL for the year ending March 31, 2006, in the crossobjection before the Income-tax Appellate Tribunal, for the first time (in the appeal preferred by the Revenue), an additional ground was urged that the assessment order was a nullity because MRPL was not in existence.

10. Assessment order was issued - undoubtedly in relation to MRPL (shown as the assessee, but represented by the This is a digitally signed order.

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11. Appeals were filed to the Commissioner of Income-tax (and a cross-objection, to the Income-tax Appellate Tribunal) - by MRPL ☐represented by MIPL'.

12. At no point in time - the earliest being at the time of search, and subsequently, on receipt of notice, was it plainly stated that MRPL was not in existence, and its business assets and liabilities, taken over by MIPL.

13. The counter-affidavit filed before this court - (dated November 7, 2020) has been affirmed by Shri. Amit Jain S/o Shri. P. K. Jain, who-is described in the affidavit as ☐Director of M/s. Mahagun Realtors (P.) Ltd., R/o...'.☐

28. It was on the aforesaid set of facts that it ultimately came to hold as under:

> □41. In the light of the facts, what is overwhelmingly evident - is that the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place, as well as statements were recorded by the Revenue of the directors and managing director of the group. A return was filed, pursuant to notice, which suppressed the fact of amalgamation; on the contrary, the return was of MRPL. Though that entity ceased to be in existence, in law, yet, appeals were filed on its behalf before the Commissioner of Incometax, and a cross-appeal was filed before the Income-tax Appellate Tribunal. Even the affidavit before this court is on behalf of the director of MRPL. Furthermore, the assessment order painstakingly attributes specific amounts surrendered by MRPL, and after considering the special auditor's report, brings specific amounts to tax, in the search assessment order. That order is no doubt expressed to be of MRPL (as the assessee) - but represented by the transferee, MIPL. All these clearly indicate that the order adopted a particular method of expressing the tax liability. The Assessing Officer, on the other hand, had the option of making a common order, with MIPL as the assessee, but containing separate parts, relating to the different transferor companies (Mahagun Developers Ltd., Mahagun Realtors Pvt. Ltd., Universal Advertising Pvt. Ltd., ADR Home D'cor Pvt. Ltd.). The mere choice of the Assessing Officer in issuing a separate order in respect of MRPL, in these circumstances, cannot nullify it. Right from the time it was issued, and at all stages of various proceedings, the parties concerned (i. e., MIPL) treated it to be in respect of the transferee company (MIPL) by virtue of the amalgamation order - and section 394(2). Furthermore, it would be anybody's guess, if any refund were due, as to whether MIPL would then say that it is not entitled to it, because This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/02/2025 at 23:37:59 the refund order would be issued in favour of a non- existing company (MRPL). Having regard to all these reasons, this court is of the opinion that in the facts of this case, the conduct of the assessee, commencing from the date the search took place, and before all forums, reflects that it consistently held itself out as the assessee. The approach and order of the Assessing Officer is, in this court's opinion in consonance with the decision in Marshall and Sons (supra), which had held that:
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> "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."

42. Before concluding, this court notes and holds that whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but

would depend on the terms of the amalgamation and the facts of each case.

43. In view of the foregoing discussion and having regard to the facts of this case, this court is of the considered view, that the impugned order of the High Court cannot be sustained; it is set aside. Since the appeal of the Revenue against the order of the Commissioner of Income-tax was not heard on the merits, the matter is restored to the file of the Income-tax Appellate Tribunal, which shall proceed to hear the parties on the merits of the appeal - as well as the crossobjections, on issues, other than the nullity of the assessment order, on merits. The appeal is allowed, in the above terms, without order on costs.

29. As is apparent from the aforesaid extracts, what appears to have weighed upon the Supreme Court in Mahagun Realtors was a deliberate attempt on the part of the successor assessee to misrepresent and perhaps an evident failure to make a candid and full disclosure of material facts. The Court in Mahagun Realtors noticed that even though the factum of amalgamation was known to the assessee, it failed to make appropriate disclosures either at the time of search or in the statements which came to be recorded in connection therewith. Even the Return of Income which came to be filed had suppressed the factum of amalgamation. It also bore in consideration that the Return itself was submitted in the name of the amalgamating entity. It was that very entity in whose name further appeals came to be instituted. It was in the aforesaid backdrop that the Supreme Court was constrained to observe that the conduct of the assessee was evidence of it having held itself out to be the entity which had ceased to exist in the eyes of law coupled with an abject failure on its part to have made a complete This is a digitally signed order.

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31. We thus find ourselves unable to read Mahagun Realtors as a decision which may have either diluted or struck a discordant chord with the principles which came to be enunciated in Maruti Suzuki. We also bear in mind the indisputable position of both judgments having been rendered by co-equal Benches of the Supreme Court. Mahagun Realtors is ultimately liable to be appreciated bearing in mind the peculiar facts of that case including the conduct of the assessee therein. It was those facets which appear to have weighed upon the Supreme Court to hold against the assessee.

32. In view of the aforesaid, the position in law appears to be well- settled that a notice or proceedings drawn against a dissolved company or one which no longer exists in law would invalidate proceedings beyond repair. Maruti Suzuki conclusively answers this aspect and leaves us in no doubt that the initiation or continuance of proceedings after a company has merged pursuant to a Scheme of Arrangement and ultimately comes to be dissolved, would not sustain.

33. We note that in this batch of writ petitions and in light of the disclosures which have been made, the assessees clearly appear to have apprised their respective AOs of the factum of amalgamation

and merger at the first available instance. If the respondents chose to ignore or acknowledge those fundamental changes, they would have to bear the consequences which would follow. Once the Scheme came to be approved, the transferor companies came to be dissolved by operation of law. They, thus, ceased to exist in the eyes of law. Proceedings thus drawn in their name would be a nullity and cannot be validated by resort to Section 292B of the Act.

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39. We find ourselves unable to be concur with the view as taken by the Tribunal for the following reasons. Undisputedly, the factum of merger was duly brought to the notice of the AO. In fact, the said authority has duly taken note of the order of the High Court and in terms of which the Scheme had come to be approved. However, inexplicably, it proceeded to frame an order in the name of EHSSIL. We note that the Return in this case was submitted by EHSSIL prior to the Scheme being sanctioned. It was perhaps in that backdrop that the notice under Section 143(2) came to be issued in its name, albeit after the Scheme had come into force. The assessment proceedings were thus ongoing at the time when the Scheme came to be sanctioned.

40. However, and admittedly, the factum of merger had been duly brought to the attention of the AO. The merger was taken into consideration at more than one place in the order of assessment that came to be framed. Despite the above, the AO proceeded to draw the order in the name of an entity which had ceased to exist. We also bear in consideration the indubitable fact that the rectification order came to be passed three years after the framing of the original order of assessment, and that too, during the pendency of the appeal of the assessee and where a specific ground of challenge was raised in this regard. This was therefore not a case of discovery of an inadvertent error or mistake immediately after the passing of an order.

41. We also bear in consideration Maruti Suzuki having clearly held that such a mistake would not fall within the ken of Section 292B of the Act. An exercise of rectification as undertaken in the present case, if accorded a judicial imprimatur, would in effect amount to recognising a power to amend, modify or correct in an attempt to overcome a fundamental and jurisdictional error contrary to the principles enunciated in Maruti Suzuki.

42. We also cannot lose sight of the fact that this was not a case where the assessee had attempted to mislead or suppress material facts and which may have warranted the case of the assessee being placed in the genre which was considered in Mahagun Realtors. The mere submission of replies on the letter head of EHSSIL also fails to convince us to hold in favour of the Revenue. In any event, none of the authorities below have held that the appellant was guilty of suppression. We would thus be inclined to allow the instant appeal and answer the question as posed in favour of the appellant and against the Revenue

8. Since the factum of disclosure of the merger has remained uncontested before us, we find ourselves unable to sustain the notice for reassessment which had been issued.

9. Accordingly and for all the aforesaid reasons, we allow the instant writ petition and quash the final impugned order issued under Section 148A(d) dated 27 July 2022 as well as the impugned notice under Section 148 dated July 2022 for AY 2014-15.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 30, 2025/akc This is a digitally signed order.