M/S. Samvardhan Motherson Innovative ... vs Deputy Commissioner Of Income Tax, ... on 6 February, 2025

Author: Yashwant Varma

Bench: Yashwant Varma

$~27 & 28
* IN THE HIGH COURT OF DELHI AT NEW DELHI
\+ W.P.(C) 5020/2022
M/S. SAMVARDHAN MOTHERSON INNOVATIVE SOLUTIONS LTD. (SUCCESSOR OF M/S. MOTHERSON SINTERMETAL TECHNOLOGY LTD.)
.....Petiti
Through: Mr. Harpreet Singh Ajmani & Ms. Manasvini Bajpai, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 16 (1) AND ORS.
.....Respon
Through: Mr. Siddhartha Sinha, SSC.

28
\+ W.P.(C) 5156/2022
M/S SAMVARDHANA MOTHERSON INNOVATIVE SOLUTIONS LTD. (SUCCESSOR OF M/S MOTHERSON SINTERMETAL TECHNOLOGY LTD.)
.....P
Through: Mr. Harpreet Singh Ajma Ms. Manasvini Bajpai, A

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 16(1) DELHI AND ORS.
.....Res
Through: Mr. Gaurav Gupta, SSC wit Mr. Shivendra Singh and M Yojit Parkee, JSCs.

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

% 06.02.2025

1. These writ petitions impugn the reassessment action initiated by 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 15/02/2025 at 00:47:44 the respondents in terms of Section 148 of the Income Tax Act, 19611 for Assessment Year2 2014-15 and 2015-16.

2. For the sake of brevity, we take into consideration the following chart which has been placed on the record by learned counsel for the writ petitioner:-

WP(C) No.	A.Y.	Appointed/e Date of approval	Factum of amalgamat ion	Revised/ Belated return	Details of regular assessment	Date of Impugned Notice/ Order	ffective date of Amalgamati scheme
WP(C) No. 5020/2022	2014-15	15 8 [copy of order dated 30.03.2019 at page [PDF] Pg. 217	19.12.2016 [Page 290 - 27.03.2021 Annexure - P-14]	scrutiny at page [PDF] the section 148 of the act was accepted.	assessment under 223 onwards 284 income [Pg. 79 Ann. P6] [PDF] of Pg. 217	[pg. 218 the WP -	
WP(C) No. 5156/2022	2015-16	16	22.03.2018			10.10.2018 [copy of order at page 120 [PDF] onwards Ann. P6] Pg. 114	

Act

AY

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 15/02/2025 at 00:47:44

3. The solitary question which appears to survive for our consideration is whether the reassessment notices as issued in the name of M/s Motherson Sintermetal Technology Ltd.3 can be sustained bearing in mind the undisputed fact that the aforenoted corporate entity had merged with Tiger Connect Travel Systems and Solutions Ltd.4 together with M/s Motherson Advanced Tooling Solutions Ltd.5, yet another subsidiary. We further note that Tiger Connect subsequently changed its corporate name to Samvardhana Motherson Innovative Solutions Ltd, the petitioner herein.

4. From the intimation which Tiger Connect provided to its jurisdictional Assessing Officer6 and which is dated 30 March 2019, we find that an appropriate disclosure had been made with respect to Motherson Advanced and Motherson Sintermetal having merged with Tiger Connect pursuant to a Scheme of Amalgamation7 having come to be approved by the Mumbai and Delhi Benches of the National Company Law Tribunal in terms of orders of 26 July 2018 and 10 October 2018 respectively. Despite the aforesaid intimation having been duly provided to the jurisdictional AO of Tiger Connect, the reassessment notice came to be issued in the name of Motherson Sintermetal.

5. It is in the aforesaid backdrop that we bear in mind the following pertinent observations that we had rendered in International Hospital Limited v. DCIT Circle 12(2)8:-

> ☐3. According to the writ petitioners, the challenge on grounds noticed above is no longer res integra and stands conclusively Motherson Sintermetal Tiger Connect Motherson Advanced AO Scheme 2024 SCC OnLine Del 6730 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 15/02/2025 at 00:47:45 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.
>
> 14. It was in the aforesaid backdrop that the Supreme Court firstly took note of an earlier decision of this Court in Spice Entertainment Ltd. v. Commissioner of Service Tax, where it had been held that an assessment made in the name of a transferor company would be void ab initio and could not possibly be viewed as a procedural

defect curable or rectifiable under Section 292B of the Act. This becomes evident from the following conclusions which came to be rendered:

□1. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exit w.e.f. 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said □dead person'. When notice under Section 143(2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s. Spice which was non existing entity on that day. In such proceedings and assessment order passed in the name of M/s. Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.

15. The Special Leave Petition which was taken against the judgment in Spice Entertainment came to be dismissed by the Supreme Court in Commissioner of Income Tax, New Delhi v. Spice Enfotainment Ltd. in the following terms:

□Delay condoned. Heard the learned Senior Counsel appearing for the parties. We do not find any reason to interfere with the impugned judgment(s) [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43], [CIT v. Dimension Apparels (P) Ltd., 2014 SCC OnLine Del 7588 : (2015) 370 ITR 288], [CIT v. Chanakaya Exports (P) Ltd., 2014 SCC OnLine Del 7678], [CIT v. Chanakaya Exports (P) Ltd., ITA No. 721 of 2014, order dated 24-11-2014 (Del)], [CIT v. Radha Appearals (P) Ltd., 2015 SCC OnLine Del 14568], [CIT v. Intel Technology (India) (P) Ltd., 2015 SCC OnLine 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 15/02/2025 at 00:47:45 Kar 9493], [CIT v. Chanakaya Exports (P) Ltd., 2015 SCC OnLine Del 14567], [CIT v. Mayank Traders (P) Ltd., 2015 SCC OnLine Del 14633], [CIT v. P.D. Associates (P) Ltd., 2015 SCC OnLine Del 14632], [CIT v. Foryu Overseas (P) Ltd., 2015 SCC OnLine Del 14566], [CIT v. Sapient Consulting Ltd., 2016 SCC OnLine Del 6615] passed by the High Court. In view of this, we find no merit in the appeals and special leave petitions. Accordingly, the appeals and special leave petitions are dismissed.

16. The aspect of an assessment coming to be framed in the name of a company which stood dissolved consequent to amalgamation appears to have arisen for consideration of this Court yet again in Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax.

The Sky Light Hospitality Court held that a defect in recording the name of a non-existent company would constitute a procedural error which could be cured under Section 292B of the Act. The appeal taken against that decision to the Supreme Court came to be dismissed in Skylight Hospitality LLP v. Assistant Commissioner of Income Tax in the following terms:--

> □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.

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:

> □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 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.
>
> 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 15/02/2025 at 00:47:45 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 to believe and the approval of the Principal Commissioner. It was in this background that the Delhi High Court held that the case fell within the purview of Section 292-B for the following reasons :

> (Skylight Hospitality case [Skylight Hospitality LLP v. CIT, 2018 SCC OnLine Del 7155 : (2018) 405 ITR 296], SCC OnLine Del para 18) ☐8. ... 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 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 15/02/2025 at 00:47:45 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) ☐9. 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 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];
>
> (ii) Chandreshbhai Jayantibhai Patel [Chandreshbhai Jayantibhai Patel v. CIT, 2018 SCC OnLine Guj 4812]; and
>
> (iii) Alamelu Veerappan [Alamelu Veerappan v. CIT, 2018 SCC OnLine Mad 13593].

31. There is no conflict between the decisions of this Court in 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 15/02/2025 at 00:47:45 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 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 15/02/2025 at 00:47:45 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 continues to carry on that business or profession--

(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 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 15/02/2025 at 00:47:45 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, □ncome 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.

20. As is evident from the above, Maruti Suzuki came to affirm the view which was expressed by this Court in Spice Entertainment. The Court in Spice Entertainment had identified the principal question to 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 15/02/2025 at 00:47:45 be whether the provisions of Section 292B could be invoked to salvage a situation where an assessment comes to be framed in the name of the transferor company. The Court was called upon to examine whether such an order of assessment would be a nullity or one which could be viewed as suffering from a procedural defect which could be validated by invoking Section 292B. Dealing with this aspect, the Court in Spice Entertainment had observed as follows:--

> □8. A company incorporated under the Indian Companies Act is a juristic person. It takes its birth and gets life with the incorporation. It dies with the dissolution as per the provisions of the Companies Act. It is trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. This position is even accepted by the Tribunal in para-14 of its order extracted above. Having regard this consequence provided in law, in number of cases, the Supreme Court held that assessment upon a dissolved company is impermissible as there is no provision in Income- Tax to make an assessment thereupon. In the case of Saraswati Industrial Syndicate Ltd. v. CIT, 186 ITR 278 the legal position is explained in the following terms:
>
> □The question is whether on the amalgamation of the Indian 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 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 15/02/2025 at 00:47:45 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.

9. The Court referred to its earlier judgment in General Radio and Appliances Co. Ltd. v. M.A. Khader, (1986) 60 Comp Cas 1013. In view of the aforesaid clinching position in law, it is difficult to digest the circuitous route adopted by the Tribunal holding that the assessment was in fact in the name of amalgamated company and there was only a procedural defect.

10. Section 481 of the Companies Act provides for dissolution of the company. The Company Judge in the High Court can order dissolution of a company on the grounds stated therein. The effect of the dissolution is that the company no more survives. The dissolution puts an end to the existence of the company. It is held in M.H. Smith (Plant Hire) Ltd. v. D.L. Mainwaring (T/A Inshore), 1986 BCLC 342 (CA) that □once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Thus an insurance company which was subrogated to the rights of another insured company was held not to be entitled to maintain an action

in the name of the company after the latter had been dissolved .

11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exit w.e.f. 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said □dead person'. When notice under Section 143(2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s. Spice which was non existing entity on that day. In such 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 15/02/2025 at 00:47:45 proceedings and assessment order passed in the name of M/s. Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.

12. Once it is found that assessment is framed in the name of nonexisting entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292B of the Act. Section 292B of the Act reads as under:--

> □292B. No return of income assessment, notice, summons or other proceedings furnished or made or issue 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 reasons 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 proceedings is in substance and effect in conformity with or according to the intent and purpose of this Act.

13. The Punjab & Haryana High Court stated the effect of this provision in CIT v. Norton Motors, 275 ITR 595 in the following manner:--

> □A reading of the above reproduced provision makes it clear that a mistake, defect or omission in the return of income, assessment, notice, summons or other proceeding is not sufficient to invalidate an action taken by the competent authority, provided that such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the provisions of the Act. To put it differently, Section 292B can be relied upon for resisting a challenge to the notice, etc., only if there is a technical defect or omission in it. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or other proceeding taken by an authority suffers from an inherent lacuna affecting his/its jurisdiction, the same cannot be cured by having resort to Section 292B.

14. The issue again cropped up before the Court in CIT v. Harjinder Kaur, (2009) 222 CTR 254 (P&H). That was a case where return in question filed by the assessee was neither signed by the assessee nor verified in terms of the mandate of Section 140 of the Act. The Court was of the opinion that such a return cannot be treated as return even a 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 15/02/2025 at 00:47:45 return filed by the assessee and this inherent defect could not be cured inspite of the deeming effect of Section 292B of the Act. Therefore, the return was absolutely invalid and assessment could not be made on a invalid return. In the process, the Court observed as under:--

> ☐Having given our thoughtful consideration to the submission advanced by the learned Counsel for the appellant, we are of the view that the provisions of Section 292B of the 1961 Act do not authorize the AO to ignore a defect of a substantive nature and it is, therefore, that the aforesaid provision categorically records that a return would not be treated as invalid, if the same ☐in substance and effect is in conformity with or according to the intent and purpose of this Act . Insofar as the return under reference is concerned, in terms of Section 140 of the 1961 Act, the same cannot be treated to be even a return filed by the respondent assessee, as the same does not even bear her signatures and had not even been verified by her. In the aforesaid view of the matter, it is not possible for us to accept that the return allegedly filed by the assessee was in substance and effect in conformity with or according to the intent and purpose of this Act. Thus viewed, it is not possible for us to accept the contention advanced by the learned Counsel for the appellant on the basis of Section 292B of the 1961 Act.

The return under reference, which had been taken into consideration by the Revenue, was an absolutely invalid return as it had a glaring inherent defect which could not be cured in spite of the deeming effect of Section 292B of the 1961 Act.

15. Likewise, in the case of Sri. Nath Suresh Chand Ram Naresh v. CIT, (2006) 280 ITR 396, the Allahabad High Court held that the issue of notice under Section 148 of the Income Tax Act is a condition precedent to the validity of any assessment order to be passed under section 147 of the Act and when such a notice is not issued and assessment made, such a defect cannot be treated as cured under Section 292B of the Act. The Court observed that this provisions condones the invalidity which arises merely by mistake, defect or omission in a notice, if in substance and effect it is in conformity with or according to the intent and purpose of this Act. Since no valid notice was served on the assessee to reassess the income, all the consequent proceedings were null and void and it was not a case of irregularity. Therefore, Section 292B of the Act had no application.

16. When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions 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 15/02/2025 at 00:47:45 of Section 292B of the Act are not applicable in such a case. The framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a ☐dead person'.

17. The order of the Tribunal is, therefore, clearly unsustainable. We, thus, decide the questions of law in favour of the assessee and against the Revenue and allow these appeals.

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 between Spice Entertainment and Sky Light Hospitality with the latter turning upon its individual facts.

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., 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 15/02/2025 at 00:47:46 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.

24. It also noticed the principles which had been spelt out with respect to a Scheme of Arrangement and its impact on a transferor company as was elaborated in Marshall Sons and Co. (India) Ltd. v. Income Tax Officer as would be evident from paragraph 22 of the report:--

> □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 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 15/02/2025 at 00:47:46 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 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 15/02/2025 at 00:47:46 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)

23. Many High Courts in recent years, had mostly relied upon Saraswati Syndicate which was a case where the transferor entity had claimed a certain relief on the basis of the agreed method of accounting. The corresponding obligation to recognise the demands was sought to be disallowed in the subsequent year, in the case of the then transferee-company. The decision of the Delhi High Court, in Spice (supra), after discussing the decision in Saraswati Syndicate, went on to explain why assessing an amalgamating-company, without framing the order in the name of the transferee company is fatal:.....

25. The Supreme Court proceeded to record its conclusions in this respect in the following terms:--

> □30. The combined effect, therefore, of section 394(2) of the Companies Act, 1956, section 2(1A) and various other provisions of the Income-tax Act, is that despite amalgamation, the business, enterprise and undertaking of the transferor or amalgamating company - which ceases to exist, after amalgamation, is treated as a continuing one, and any benefits, by way of carry forward of losses (of the transferor company), depreciation, etc., are allowed to the transferee. Therefore, unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation, continues.

26. However, and on facts, it found as follows:--

> □33. There is no doubt that MRPL amalgamated with MIPL and ceased to exist thereafter; this is an established fact and not in contention. The respondent has relied upon Spice and Maruti Suzuki (supra) to contend that the notice issued in the name of the amalgamating company is void and illegal. The facts of the present case, however, can be distinguished from the facts in Spice and Maruti Suzuki on the following bases.
>
> 34. Firstly, in both the relied upon cases, the assessee had duly informed the authorities about the merger of companies and yet the assessment order was passed in the name of the amalgamating/non-existent company. However, in the present case, for the assessment year 2006-2007, there was no intimation by the assessee regarding amalgamation of the company. The return of income for the assessment year 2006-

2007 first filed by the respondent on June 30, 2006 was in the name of MRPL. MRPL amalgamated with MIPL on May 11, 2007, with effect from April 1, 2006. In the present case, the proceedings against MRPL started in August 27, 2008 - when search and seizure was first conducted on the Mahagun group 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 15/02/2025 at 00:47:46 of companies. Notices under section 153A and section 143(2) were issued in the name MRPL and the representative from MRPL corresponded with the Department in the name of MRPL. On May 28, 2010, the assessee filed its return of income in the name of MRPL, and in the □business reorganization column of the form mentioned □not applicable in amalgamation section. Though the respondent contends that they had intimated the authorities by letter dated July 22, 2010, it was for the assessment year 2007- 2008 and not for the assessment year 2006-2007. For the assessment years 2007-2008 to 2008-2009, separate proceedings under section 153A were initiated against MIPL and the proceedings against MRPL for these two assessment years were quashed by the Additional Commissioner of Income-tax by order dated November 30, 2010 as the amalgamation was disclosed. In addition, in the present case the assessment order dated August 11, 2011 mentions

the name of both the amalgamating (MRPL) and amalgamated (MIPL) companies.

35. Secondly, in the cases relied upon, the amalgamated companies had participated in the proceedings before the Department and the courts held that the participation by the amalgamated company will not be regarded as estoppel. However, in the present case, the participation in proceedings was by MRPL - which held out itself as MRPL.

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 respect of the Mahagun group, including the MRPL and other companies:
>
> (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 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 15/02/2025 at 00:47:46 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 transferee company MIPL).

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 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 15/02/2025 at 00:47:46 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 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:

"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 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 15/02/2025 at 00:47:46 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 disclosure.

xxxx

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 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 15/02/2025 at 00:47:46 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.

xxxx

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 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 15/02/2025 at 00:47:46 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.

6. Although it was sought to be contended that the AO who had issued the impugned notices and was the jurisdictional AO of Motherson Sintermetal was not intimated of such a Scheme, we find ourselves unable to countenance that submission bearing in mind the fact that ultimately the same

only pertains to the sharing of information between different units of the respondents. Since the factum of the merger and its communication stood uncontested before us, we find ourselves unable to sustain the impugned notices under Section 148 of the Act.

7. The writ petitions are accordingly allowed. The impugned notices dated 27 March 2021[W.P.(C) 5020/2022] and 26 March 2021 [W.P.(C) 5156/2022] are hereby quashed.

8. Since we have proceeded to quash the Section 148 notices, the consequential assessment orders dated 30 March 2022, which had come to be passed during the pendency of the writ petition and had been duly noticed in our order of 18 April 2022, would also not sustain. They too, shall consequently stand set aside.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 06, 2025/akc 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 15/02/2025 at 00:47:46