IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-2': NEW DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 5191/Del /2011
Assessment Year: 2007-08

Noida Customer Operation (P) Ltd., Now merged with WNS Global Services Private Ltd., 103-A, ASHOKA Estate, Barakhamba Road, New Delhi. (PAN: AAACW2598L)	vs	ITO, Ward-13(3), New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri Shubham Gupta, Adv.
Respondent by : Shri Sanjay Kumar Yadav, Sr. DR

Date of Hearing : 22.09.2017
Date of Pronouncement: 22.09.2017

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the assessee against final order of assessment dated 28th September 2011 passed by the Income Tax Officer, Ward 13(3), New Delhi (the "AO") pursuant to

the directions issued by the Hon'ble Dispute Resolution Panel ("DRP") vide order dated 19th August 2011.

2. Facts in brief are that the assessee is engaged in the business of rendering transaction processing services, internet and voice based customer care services to the customers of its parent company. For the year under consideration, return declaring total income of Rs 5,39,958/- was filed by the asseseee. During the course of assessment proceedings, the AO referred the matter to the Transfer Pricing Officer ("TPO") for determination of the Arm's Length Price (ALP) of the international transactions entered into by the assessee with its Associated Enterprise (AE). The TPO, vide order dated 08th September 2010, proposed an adjustment of Rs 10,86,36,486/-. The AO, thereafter, passed the draft assessment order vide order dated 29th December 2010 assessing the total income of the assessee at Rs 10,91,76,440/-. The assessee, however, filed objections before the Hon'ble DRP. The Hon'ble DRP, vide order dated 19th August 2011, issued certain directions to re-compute the ALP of the international transactions. Pursuant to the directions issued by the Hon'ble DRP, vide order dated 26th September 2011, the TPO directed that a revised Transfer Pricing (TP) adjustment of Rs

5,25,34,828/- be made in the instant case. Subsequently the AO passed the final order of assessment dated 28th September, 2011 assessing the total income of the assessee at Rs 5,30,74,786/-.

2.1 Being aggrieved, the assessee is now in appeal before the ITAT and the following grounds have been raised in the appeal:-

> *"1. On the facts and circumstances of the case, and in law, the Learned Assessing Officer (hereinafter referred to as "Ld. AO") has erred in completing, and the Honorable Dispute Resolution Panel (hereinafter referred to as "Hon'ble DRP") has erred in confirming the assessment on the Appellant for the relevant assessment year disregarding the fact that the Appellant had merged with WNS Global Services India Private Limited, and hence, the order passed under section 143(3) of the Income Tax Act ("the Act") is without jurisdiction, bad in law, void ab-initio and is liable to be quashed.*
>
> *2. On the facts and circumstances of the case, and in law, the Learned Transfer Pricing Officer (hereinafter referred to as "Ld. TPO") and the Ld. AO have erred in proposing, and the Hon'ble DRP has erred in confirming [under Section 144C(6)], the addition of Rs. 5,25,34,828 to the income of the Appellant for AY 2007-08 under section 92CA(3) of the Act.*
>
> *3. On the facts and circumstances of the case, and in law, the Ld. TPO and the Ld. AO have erred in not granting, and the Hon'ble DRP has further erred in not granting the benefit of 5% variation as per the proviso to section 92C(2) of the Act to the Appellant.*

4. On the facts and circumstances of the case, and in law, the Ld. TPO and the Ld. AO have erred in rejecting, and the Hon'ble DRP has further erred in confirming the rejection of a comparable company i.e. Ace Software Exports Limited, on the basis that it had declining revenue and a down-turn in business cycle, thereby disregarding the provisions of Rule 10B(2) of the Rules.

5. On the facts and circumstances of the case, and in law, the Ld. TPO and the Ld. AO have erred in rejecting, and the Hon'ble DRP has further erred in confirmingthe rejection of a comparable company i.e. Kirloskar Computer Services Limited, on the basis that it had persistent losses, thereby disregarding the provisions of Rule 10B(2) of the Rules.

6. On the facts and circumstances of the case, and in law, the Ld. TPO and the Ld. AO have erred in rejecting, and the Hon'ble DRP has further erred in confirming the rejection of a comparable company i.e. Fortune Infotech Limited, on the basis that it had a different financial year ending than that of the Appellant, thereby disregarding the provisions of Rule 10B(2) of the Rules.

7. On the facts and circumstances of the case, and in law, the Hon'ble DRP has erred in rejecting a comparable company i.e. C S Software Enterprise Limited (selected by the Appellant in the Transfer Pricing Study Report ("TP Report") and accepted by the Ld. TPO during assessment proceedings) by applying an additional quantitative filter of rejecting companies having export earnings of less than 25% of sales, without providing the Appellant a show-cause notice and a reasonable opportunity of being heard, thereby violating the provisions of Rule 10B(1)(e)(iii) of the Rules.

8. On the facts and circumstances of the case, and in law, the Ld. TPO and the Ld. AO have erred in not allowing, and the Hon'ble DRP has further erred in confirming the disallowance of appropriate adjustments to account for differences between the Appellant and the comparable companies on account of risk, thereby violating the provisions of Rule 10B(1)(e)(iii) of the Rules.

9. On the facts and circumstances of the case, and in law, the Ld. TPO, the Ld. AO and the Hon'ble DRP have violated the Proviso to Rule 10B(4) of the Income Tax Rules ("the Rules") by disregarding prior years' data used by the Appellant in the TP Report and holding that current year (i.e. Financial Year 2006-07) data for comparable companies should be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP Report, and in doing so have grossly erred in interpreting the requirement of 'contemporaneous' data in the Rules to necessarily imply current year data, thereby breaching the principles of natural justice and 'impossibility of performance'.

10. On the facts and circumstances of the case, and in law, the Ld. TPO and the Ld. AO have erred in not appreciating, and the Hon'ble DRP has further erred in not appreciating that there was no intention whatsoever on the part of the Appellant to shift profits outside India by under-reporting revenue attributable to the IT Enabled services function since the Appellant was eligible to claim 100% of such profits as tax exempt under section 10A of the Act.

11. On the facts and circumstances of the case, and in law, the Ld. TPO and the Ld. AO have erred in rejecting, and the Hon'ble DRP has further erred in confirming the rejection of the Appellant's arm's length price without first demonstrating that either of the conditions mentioned in clauses (a) to (d) of Section 92C(3) of the Act were satisfied.

12. On the facts and circumstances of the case, and in law, the Ld. AO has erred in initiating penalty proceedings u/s 271(1) (c) of the Act.

13. On the facts and in the circumstances of the case, the Ld. AO has erred in levying interest under section 234B and 234D of the Act and withdrawing interest allowed u/s 244A of the Act.

The above grounds are notwithstanding and without prejudice to each other. The objections embodied in the above grounds are mutually exclusive.

The Appellant craves leave to supplement, to cancel, amend, add and/or otherwise alter/modify any or all the grounds of the appeal stated hereinabove."

3. At the outset, the Ld. AR submitted that Ground No. 1 was a legal ground which needed to be adjudicated first before the issues involved were taken up on merits. The Ld. DR had no objection to the proposal and, therefore, ground no. 1 was taken up first.

3.1 The Ld. AR submitted that assessment in this case has been framed upon *"M/s Noida Customer Operations P. Ltd. merged with M/s WNS Global Services India Ltd"* which is a non-existent entity. It was submitted that, vide order dated 11th August 2009, the Hon'ble Bombay High Court had directed for the amalgamation of M/s Noida Customer Operations P. Ltd into M/s WNS Global Services India Ltd and the cut-off date in this regard was set as 01st April 2007. It was further submitted by the Ld AR that this fact was duly intimated to the tax authorities. It was submitted that, however, ignoring this, the AO, in the instant case, framed the assessment on 28th September 2011, on Noida Customer Operations P. Ltd which is a non-existing entity. It was submitted by the Ld AR that this invalidated the order of

assessment. In support of his claim Ld AR relied upon following decisions:

(i) Order dated 14th June 2017 passed by "I-2" Bench of ITAT in the case of the assessee itself for AY 2006-07 in ITA No. 5526/Del/2010

(ii) Spice Entertainment Ltd vs CIT reported in 2011-TIOL-971-HC-Del-IT

(iii) Order dated 14th September 2012 passed by the Bangalore Bench of the ITAT in the case of M/s WNS Global Services Pvt Ltd (as successor to WNS Customer Solutions Pvt Ltd vs DCIT in ITA No. 1198/Del/2010).

(iv) CIT vs Micra India P. Ltd reported in 231 Taxman 809(Del)

(v) CIT vs Dimension Apparels Pvt Ltd reported in 2014-TIOL-1897-HC-Del

4. Opposing the above submissions, the Ld DR submitted that the assessment in the instant case has been correctly framed. It was submitted by the Ld DR that the AO in the instant case has also mentioned the name of M/s WNS Global Services Private Limited in the order of assessment. The Ld DR submitted that the

Hon'ble DRP has appropriately dismissed the objection raised by the assessee challenging the validity of assessment.

5. We have considered the rival submissions and the material placed on record. It is seen that in the case of the assessee itself for AY 2006-07 (i.e. the immediately preceding Assessment Year) the ITAT had adjudicated an identical issue. In AY 2006-07 also, the assessment was framed by the department on *"M/s Noida Customer Operations P. Ltd merged with M/s WNS Global Services India Pvt Limited"*. While allowing the claim made by the assessee the co-ordinate Bench of ITAT, Delhi followed the decision of the Bangalore Bench of the ITAT in the case of M/s WNS Global Services Pvt. Ltd (as successor to WNS Customer Solutions Pvt. Ltd) vs DCIT in ITA No. 1198/Del/2010 i.e. sister concern of the assessee and which was also covered under the same scheme of amalgamation approved by the Hon'ble Bombay High Court. It was held by the co-ordinate Bench of ITAT, Delhi as under:

> *"16. We find an identical issue had come up before the Bangalore Bench of Tribunal in the case of M/s WNS Global Services P. Ltd. M/s WNS Global Services P. Ltd. had filed its return of income on 25.11.2006 for the A.Y. 2006-07. The assessee had filed an application before the Hon'ble Bombay High Court for amalgamation with M/s WNS Global Services P. Ltd. and the appointed date for amalgamation was 01.04.2007 which was approved by Hon'ble Bombay High Court on 11.08.2009 the assessee had addressed a letter*

dated 24.08.2009 to the Joint Director of Income Tax (Transfer Pricing-2), Bangalore bringing to his notice that the assessee had amalgamated with M/s WNS Global Services P. Ltd. and, therefore, the assessment cannot be concluded in the hands of the assessee. Similar letters were also addressed to the Chief CIT-1, Bangalore informing him about the approval of the scheme of merger by the Hon'ble Bombay High Court w,e,f. 01.04.2007. However, the DRP wide order dated 16.07.2010 rejected the objection of the assessee to the jurisdiction of the AO in respect of the A.Y. 2006-07 wherein the order u/s 143(3) was passed on 31.08.2010. The Tribunal following the decision of the Hon'ble Delhi High Court in the case of Spice Entertainment Ltd. (supra) and the decisions of the Hon'ble Calcutta High Court in the case of CIT vs SRMV Udyog Ltd. in ITA No. 241/2011 order dated 08.11.2011 and in the case of I.K. Agency Pvt. Ltd. vs CWT vide ITA No. 1/2003 dated 11.03.2011 decided the issue in faovur of the assessee by observing as under:-

> *"6. Having heard both the parties and having considered the rival contentions, we find that undisputedly the assessee company was in existence in Bangalore for the relevant previous year 2005-06 and it is the assessee who has filed its return of income for the assessment year 2006-07 on 25.11.2006, the notice u/s 143(2) was issued on 4-10-2007 whereas the amalgamation of the assessee company with WNSGS has come into effect from the appointed date i.e. 1-4-2007. As soon as the scheme of amalgamation has been approved by the Hon'ble High Court of Bombay w.e.f. 1-4-2007, the assessee company ceased to exist from 1-4-2007. Therefore, issuance of notice u/s 143(2) prior to the order of the Bombay High Court will lose its significance as the assessee ceased to be in existence from a date prior to the date of notice issued u/s 143(2).*
>
> *7. We find that similar facts exist in case of Spice Entertainment Ltd. (supra) before the Hon'ble Delhi High Court. In the case of Spice Entertainment Ltd. also, the assessee therein had filed its return of income on 30-10-*

2002 while the assessee amalgamated with MNSGS w.e.f. 1-7-2003. In the said case also, notice u/s 143(2) was issued by the AO on 18-10-2003 while the order of the Delhi High Court approving the amalgamation is 11-2-2004. The factum of amalgamation was brought to the notice of the AO therein and despite the same, the assessment was completed on 28-3-2005 framing the assessment on the amalgamation company. After considering the above facts of the case and the legal position thereon, the Hon'ble Delhi High Court held that after sanction of the scheme vide orders dated 11-2-2004, the Spice Entertainment ceases to exist w.e.f. 1-7-2003 and even if Spice had filed its return of income, it becomes incumbent upon the income-tax authority to substitute the successor in place of the said dead person. It was held that where the amalgamated company was not substituted and the AO made the assessment in the name of the Spice which was not an existing entity on the date of assessment, such proceedings would clearly be void in spite of the participation of the amalgamated company in the proceedings. It was held that such a defect is not a procedural irregularity which could be cured by invoking the provisions of 292B of the Act. The Hon'ble Delhi High Court finally held that as the returns were filed by Spice on the date when it was in existence, it would be permissible to carry out the assessment on the basis of those returns after taking proceedings afresh from the stage of issuance of notice u/s 143(2) of the Act by first substituting the name of the amalgamated company in place of the amalgamating company and then issue notice to the amalgamated company. It was however, made clear that such course of action can be taken by the AO only if it is still permissible as per law and has not become time-barred.

8. In the case before us also, we find that the assessee has been bringing to the knowledge of the AO and also the TPO and the DRP, the factum of amalgamation and also has prayed that the files may be transferred to the jurisdiction of the amalgamated company i.e. Mumbai for necessary action. However, we

find that the revenue has not taken any steps to substitute the amalgamating company with the amalgamated company. Mere change of name in the assessment order will not amount to substitution of the amalgamating company with the amalgamated company as submitted by the learned Departmental representative. Notice will have to be issued to and served upon the amalgamated company as it is only the AO who has jurisdiction over the amalgamated company, who can initiate and complete the assessment. In has been vigilant and consistent in bringing the facts of amalgamation to the notice of the revenue authorities from time to time without any delay. Because the revenue authorities have not taken any steps pursuant to said letters, it cannot be presumed that they have authority to complete the assessment on a non-existing assesee company.

9. In view of the same, respectfully following the decision of the Hon'ble Delhi High Court in the case of Spice Entertainment Ltd., (supra) we hold that the assessment on WNSCS, which is a non-existing company, is not valid. However, as the return of income was filed by WNSCS on the date when it was in existence, we hold that it would be permissible to carry out the assessment on the basis of the said return on the amalgamated company after initiating proceedings afresh from the stage of issuance of notice u/s 143(2) of Act after first substituting the name of WNSGS in place of WNSCS. However, as held by the Hon'ble Delhi High Court in the case of Spice Entertainment, such a course of action can be taken by the AO only if it is still permissible as per law and has not become time barred. Since we have held that the assessment itself is void, we do not see any reason to adjudicate the other grounds of appeal."

5.1 The co-ordinate Bench of ITAT, Delhi, thereafter, also followed the decision of Hon'ble Delhi High Court in case of Dimensions Apparels (supra) wherein it is held as under:

"4. The revenue, in its appeal argues, first of all that by virtue of Sections 170(1) and 170(2) of the Income Tax Act, in cases of succession of business, where the predecessor cannot be found, the assessment that would otherwise have been made upon the predecessor, shall instead be made upon the successor in a like manner. It is secondly contended that the error in the assessment order, if any, is a minor one, at best an irregularity; thus saved by Section 292B of the Act. It was argued lastly that the assessee had itself participated in the proceedings throughout and could not be heard to complain against the assessment order. The revenue relies on the Madras High Court ruling in Marshall Sons & Co. v. ITO [1992] 195 ITR 417.

5. The assessee contends that no question of law arises for consideration. It submits that the text and phraseology of Sections 170 (1) and (2) do not support the revenue's arguments. The assessee further relies on Saraswati Industrial Syndicate Ltd. v. CIT [1990] 186 ITR 278/53 Taxman 92(SC) in support of its contentions and the findings of the tax authorities below, i.e. the CIT (A) and the ITAT. Spice Entertainment Ltd. v. CIT [ITA No. 475 of 2011], decided by a Division Bench of this Court, as well as an earlier decision in CIT v. Vived Marketing Servicing (P.) Ltd. [IT Appeal No. 273 of 2009] were relied on by the assessee as well, in support of its contentions. It was also pointed out that the jurisdictional defect in this case could not be cured under Section 292-B of the Act.

6. Sections 170(1) and 170(2) of the Act do not assist the revenue in their case. The revenue does not contest that in a case of amalgamation, the predecessor (being a dissolved company) "cannot be found". Consequently, Section 170(2) applies. This provision clarifies that where 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 the succession and of the precious 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." (Emphasis Supplied)

7. The revenue seems to argue that the assessment is justified because the liabilities of the amalgamating company accrue to the amalgamated (transferee) company. While that is true, the question here is which entity must the assessment be made on. The text of Section 170(2) makes it clear that the assessment must be made on the successor (i.e., the amalgamated company).

8. The Supreme Court, in Saraswati Industrial Syndicate Ltd. (supra) held that, "after the amalgamation of the two companies the transferor company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets." (Emphasis Supplied)

9. With respect to the specific issue of assessment, in Vived Marketing Servicing (P.) Ltd. (supra) the Court observed that:

> *"When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of Companies u/s 560 of the Companies Act. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved." (Emphasis Supplied)*

10. Vived Marketing Servicing (P.) Ltd. (supra) also noted that Section 176 of the IT Act, which contains provisions pertaining to a discontinuation of business, does not apply to a case of amalgamation/dissolution. It was also held that Section 159 of the Act, which provides for tax liability to be attached to the legal representatives of a deceased person, is likewise inapplicable. The language of Section 159 evidently only applies to natural persons, and cannot be extended, through a legal fiction, to the dissolution of companies.

11. Marshall Sons and Co. (supra), is relied on by the revenue. It was held in that judgment that, "the transferor-company shall, with effect from the transfer date, be deemed to have carried on its business for and on behalf of the transferee-company and, accordingly, the profits and losses of the transferor- company for the period commencing from the transfer date, shall be deemed to be the profits or losses of the transferee-company and shall be available to the transferee-company for disposal in any manner."

12. That case, however, involved a controversy about the effective date of amalgamation, and not about whether an assessment of income can be made on an amalgamated company. In fact, the logic of the Madras High Court's decision undermines the Appellants' case. The Madras High Court found for the Revenue, because, in its opinion, the effective date of amalgamation came after the date of the assessment. The assessee argued that the date of amalgamation was January 1, 1982, whereas the assessment order was dated November 25, 1984.

13. The Madras High Court held that—

> *"according to the records maintained pursuant to the provisions of the Companies Act, the subsidiary company had continued to remain in existence up to January 21, 1986, even long after January 1, 1982."*

14. On this basis, it held the Assessee liable. This obviously implies that had the company not been in existence at the time of the assessment order, it would not have been liable.

15. In Spice Entertainment Ltd. (supra), this Court, after discussing the law declared by the Supreme Court in Saraswati Industrial Syndicate Ltd. (supra) stated that:

> *"9. The Court referred to its earlier judgment in General Radio and Appliances Co. Ltd. v. M.A. Khader [1986] 60 Comp Case 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 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."

16. The authority of the above precedent binds us; we see no reason to differ from the logic and reasoning in Spice Entertainment Ltd. (supra).

17. The other aspect is as to the applicability of Section 292-B of the Act, which reads as follows:

> *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."*

18. The Revenue argues that the assessment was in substance and effect in conformity with the Act, because the Assessing Officer had used correct nomenclature in writing the name of the Assessee, along with the fact that the company had amalgamated, as well as the correct address of the amalgamated company. Consequently, they contend that "the mere omission, if any on the part of the AO to mention the name of the appellant/amalgamated company in place of M/s Dimension Apparel… [is]…therefore a procedural defect."

19. The question of whether an assessment upon an amalgamated company is a mistake within the meaning of Section 292B was raised and answered by the Delhi High Court in Spice Entertainment Ltd. (supra). In that case, the Tribunal had held that, "the assessment in substance and effect has been made against amalgamated company in respect of assessment of income of amalgamating company for the period prior to amalgamation and mere omission to mention the name of amalgamated company alongwith the name of amalgamating company in the body of assessment against the item "name of the assessee" is not fatal to the validity of assessment but is a procedural defect covered by Section 292B of the Act." (Emphasis Supplied)

20. This Court rejected this argument, holding that, " it [becomes] incumbent upon the Income Tax Authorities to substitute the successor in place of the said 'dead person'. Such a defect cannot be treated as procedural defect... once it is found that assessment is framed in the name of non-existing 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." (Emphasis Supplied)

21. In Spice Entertainment Ltd. (supra) the reason for the inapplicability of Section 292-B was additionally premised on the decision of the Punjab & Haryana High Court in CIT v. Norton Motor, [2005] 275 ITR 595/146 Taxman 701, that while Section 292B can cure technical defects, it cannot cure a "jurisdictional defect in the assessment notice."In Spice Entertainment Ltd. (supra), therefore, this Court expressly classified "the framing of assessment against a non-existing entity/person" as a jurisdictional defect. This has been a consistent position. As early as 1960, in CIT v. Express Newspapers Ltd. [1960] 40 ITR 38 (Mad), the Madras High Court held that, "there cannot be an assessment of non-existent person. The assessment in the instant case was made long after the Free Press Company was stuck off from the register of the companies, and it could not be valid." (Emphasis Supplied)

22. On the last contention, i.e. with respect to participation by the previous assessee, i.e. the amalgamating company (which ceases to exist), again Spice Entertainment Ltd. (supra) is categorical; it was ruled on that occasion that such participation by the amalgamated company in proceedings did not cure the defect, because "there can be no estoppel in law." Vived Marketing Servicing (P.) Ltd. (supra) had also reached the same conclusion.

23. It is thus clear that all contentions sought to be urged by the revenue are in respect of familiar grounds, which have been ruled upon, against it, consistently in two decisions of this court. Therefore, no substantial question of law arises in this appeal."

5.2 Finally it was concluded by Tribunal as under:

> *"18. Since in the instant case also, the amalgamation of the assessee company with M/s WNS Global Services P. Ltd. has come in to effect from the appointed dated i.e. 01.04.2007 as per the order of the Hon'ble High Court and since this fact was duly intimated to the tax authorities, therefore, the assessment made on the non-existing company in the instant case is not valid. Therefore, Ground NO. 4 of the assessee is allowed. Since the assessee succeeds on this legal ground, the other grounds on merit being academic in nature are not being adjudicated."*

5.3 Since the facts of instant case are also same, respectfully following the above binding precedents, it is held that the final order of assessment dated 28th September 2011 passed by the AO on *"M/s Noida Customer Operations P. Ltd"* which is a non-existing entity post order of the Hon'ble Bombay High Court (approving the Scheme of Amalgamation) is bad in law and the same is hence quashed. Since the order of assessment is itself quashed we see no reason to adjudicate upon remaining grounds of appeal.

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

The order is pronounced in the open court on 22.09.2017.

Sd/-	**Sd/-**
(B.P. JAIN)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 29th September, 2017
'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order

ASSISTANT REGISTRAR