

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIT KUMAR, JUDICIAL MEMBER

IT(TP)A No. 1555/Bang/2012
Assessment Year :2008-09

M/s. Mindtree Ltd., (Previously known as M/s. Aztecsoft Ltd., now merged with M/s. Mindtree Ltd.), Global Village, R.V.C.E Post, Mylasandra, Mysore Road, Bangalore – 560 059. PAN: AABCA2122R	Vs.	The Assistant Commissioner of Income Tax (LTU), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Tata Krishna, Advocate
Revenue by	:	Smt. Susan D. George, CIT (DR)

Date of hearing	:	20.11.2017
Date of Pronouncement	:	08.12.2017

ORDER

Per Shri A.K. Garodia, Accountant Member;

This is an assessee's appeal directed against the assessment order dated 16.10.2012 passed by the AO for Assessment Year 2008-09 u/s. 143(3) r.w.s. 144C of the IT Act as per the directions of DRP.

2. The assessee has raised additional grounds which are as under.

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<i>Appeal Memorandum in Form 36B: Ground No. XVI</i>	<i>Concise Grounds: Ground No. 30</i>
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The learned Assessing Officer has erred in law and on facts in passing the Assessment Order in the name of "Aztecsoft Ltd.," though the said entity was not in existence as on the date of passing of the assessment order i.e., 16.10.2012. He has failed to appreciate that passing an assessment order on a non-existent entity is void and an incurable defect in the eyes of law.

<i>Appeal Memorandum in Form 36B: Ground No. XVII</i>	<i>Concise Grounds: Ground No. 31</i>
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Without prejudice to above, the Learned Assessing Officer is not justified in making reference under section 92CA (1) without satisfying the conditions of section 92CA (1) and Learned Commissioner of Income Tax is not justified in approving such reference mechanically.”

3. It was submitted by Id. AR of assessee that on pages 96 to 126 of paper book is copy of scheme of amalgamation of Aztecsoft Ltd. with Mindtree Ltd. and on pages 127 to 137 of paper book is the copy of order dated 03.06.2009 of Hon'ble Karnataka High Court in Company Petition No. 09 of 2009 sanctioning the scheme of amalgamation. He also submitted that copy of Form 21 filed by Mindtree Ltd. to Registrar of Company intimating the sanction of scheme of amalgamation on 17.06.2009 is available on pages 138 to 142 of the paper book. He also submitted that similarly, copy of Form 21 filed by Aztecsoft Ltd. to Registrar of Company intimating the sanction of scheme of amalgamation on 17.06.2009 is available on pages 143 to 147 of paper book. Thereafter, he submitted that on page no. 148 of paper book is copy of letter along with the court order intimating the sanction of scheme of amalgamation filed before AO i.e. DCIT, Circle 11 (1) dated 23.07.2009 filed on 24.07.2009. Thereafter, he submitted that the impugned assessment order was passed by the AO on 16.10.2012 i.e. much after the merger date and the date of intimation of merger and the said assessment order is passed in the name of the merged entity Aztecsoft Ltd. although it is stated in the assessment order that this company is now merged with Mindtree Ltd. and therefore, this is apparent that the fact of merger is very much in the knowledge of AO. He submitted that under these facts, the assessment order is bad in law and it should be quashed and in support of his contention, he placed reliance on the judgment of Hon'ble Delhi High Court rendered in the case of Principal CIT Vs. Maruti Suzuki India Ltd. which is successor of M/s. Suzuki Powertrain India Ltd. as reported in 397 ITR 681 (Delhi). He also submitted copy of a judgment of Hon'ble Apex Court rendered in the case of CIT Vs. M/s. Spice Entertainment Ltd. in Civil Appeal No. 285 of 2014 dated 02.11.2017 and placed reliance on it. He submitted that the SLP filed by the revenue was dismissed. He also submitted copy of a judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. M/s.

Intel Technology India Pvt. Ltd. successor in interest to M/s. Software & Silicon Systems India Pvt. Ltd. in ITA Nos. 499 & 500/2009 dated 03.03.2015 and plac3ed reliance on it. He submitted that in this case also, it was held by Hon'ble Karnataka High Court that the assessment order passed in the merged entity name is not valid in law and same was quashed although it was held that department may proceed for making assessment in accordance with law in the name of new entity in terms of the provisions of the IT Act, 1961.

4. The Id. DR of revenue filed written submissions which are reproduced herein below.

“In this case, the assessee is challenging the validity of assessment order passed on 16.10.2012 in the name of M/s Aztechsoft Limited (now merged with M/s Mindtree Limited) by filing additional grounds of appeal.

2. It is noted that the assessee has not challenged the jurisdiction issue in any of the earlier proceedings, neither during the assessment proceedings nor during the DRP proceedings.

*3. It may kindly be noted that the name of the assessee in the first page of the assessment order for 2008-09 is mentioned as **M/s Aztechsoft Ltd (now merged with M/s Mind Tree Ltd)**. The address of the assessee mentioned in the assessment order is **"Global Village, Rvce post, Mysore road, Bangalore-560059"**. This is the correct address of successor entity M/s Mind Tree Ltd and not of erstwhile entity M/s Aztechsoft Ltd. It means that the event of merger of assessee company has been duly taken into account while passing the assessment order. Further, the first paragraph of the final assessment order is quoted below.*

*"Aztechsoft Limited (Aztech for short), incorporated in 1995, **now merged with Mindtree Limited** is the principal holding company of AztechDishaInc and Aztech US."*

It can be seen from the above that the assessment order is indeed passed in the name of successor company wherein the Name, address have been correctly mentioned.

4. It is observed that the assessee company filed its return of income on 29.09.2008 in the name M/s Aztech Soft Ltd. for A.Y. 2008-09 with total income of Rs. 7,39,72,420 and a refund claim of Rs. 1,52,59,030. The assessee company got merged with Mindtree Limited with appointed date of 01/04/2009 as approved by the Hon'ble High Court vide order dated 09/06/2009. Thus, till 31.03.2009, Aztech Soft Ltd had separate existence and the

*assessment year in question is with regard to the financial affairs of the assessee company for F.Y. 2007-08. Notice u/s 143(2) of the Act was issued to the assessee company on 27/08/2009 selecting the case for scrutiny of the return filed in the name of M/s Aztech Soft Ltd. The same was duly served on the assessee. In fact, there was a response by the assessee by way of acknowledging the receipt of notice and seeking extension of time for appearance by way of filing a letter dated 22/09/2009. The letter was signed by Sri SrirangaKrish, Associate Director-Finance of Mindtree Limited. However, there was no communication by the assessee regarding the event of merger in the letter (**Enclosure-1**).*

*5. It is noted that the refund claim of the assessee was processed u/s 143(1) of the Act on 09/01/2010, which is subsequent to the date of merger, in the name of Aztech Soft Limited. However, the assessee has not objected for the same while accepting the refund (**copy of 143(1) order-Enclosure-2**).*

*6. Subsequent notices u/s 142(1) have been issued in the name of M/s Aztech Soft Limited (now merged with Mindtree Limited) and addressed to registered address of Mindtree Limited (successor entity). Copy of notice u/s 142(1) dated 14.12.2011 is enclosed as one such reference (**enclosure-3**). It is also seen that all the subsequent notices and orders such as draft assessment order, DRP order, Final assessment order have been passed in the name of M/s Aztech Soft Limited (now merged with Mindtree Limited) and addressed to registered address of Mindtree Limited (successor entity). The assessee has also filed responses in the same manner. One such reply of assessee dated 16/01/2012 is enclosed (**Enclosure-4**) for ready reference. Even the power of attorney filed by the assessee before the assessing officer mentions the details as M/s Aztech Soft Limited (now merged with Mindtree Limited) (**enclosure-5**). Therefore, the assessee is not correct in stating that the assessment order passed is not valid.*

*7. It is also verified from records that the change in address of the assessee was informed officially only on 26/11/2012 to the DCIT, Circle 12(1), which was forwarded to the DCIT (LTU) (**enclosure-6**).*

8. In view of all the facts above, the assessee cannot take a stand that the assessment order was passed on nonexistent entity. The provisions of section 170(1) of the Act are clearly applicable in this case, as the succession of business has taken place by way of merger and the assessment in respect of business carried on by the assessee till the date of merger is assessed in the hands of the assessee and addressed to the successor company. It is also pointed out that the assessment has been made after recording the fact of merger and Mindtree Ltd being the successor, all the liabilities stand transferred to it post merger.

9. *The Hon'ble ITAT, Bangalore in the case of TrishulBuildtech Infrastructure (P) Ltd vs JCIT, ITA No.s 1362 & 1367/Bang/2013 dated 20.02.2015 decided the issue in favour of revenue in similar circumstances. The relevant para is extracted as under.*

"25 It can be seen from the provisions of s.170(1) that if there is a succession in the business of assessee, the predecessor has to be assessed in respect of income of the previous year in which succession took place upto the date of succession. The admitted factual position in the present case is that the conversion of Trishul Developers the partnership firm as a limited company by name TBIPL took place on 1.2.2010. Therefore, for A.Ys 2004-05, 2005-06 & 2007-08, only Trishul Developers will have to be assessed. The provisions of s.170(2) cannot be involved for the simple reason that the erstwhile firm filed the return of income and was very much available. S. 170(2) is attracted only in a case where the predecessor "cannot be found". In our opinion, the CIT(A) has rightly rejected the contentions in this regard put forth by the assessee."

10. *It is submitted that the decisions of Hon'ble High Court in the case of Intel technology[2015] 57 taxmann.com 159 and Hon'ble ITAT decision in the case of M/s. GE Medical Systems (India) Pvt. Ltd., (Since merged with Wipro GE Healthcare Pvt. Ltd.) I.T.(T.P.) A. No.328/Bang/2015 are not applicable to the facts of the present case.*

Because, in those cases, the assessment orders were passed in the name of nonexistent companies without considering the event of merger and even when there was intimation of such merger to the assessing officer. However, in the present case, as mentioned in earlier paragraphs, the assessment order was passed in the name of M/s Aztech Soft Limited (now merged with Mindtree Limited) duly considering the event of merger and clearly bringing the fact of merger in the assessment order.

11. *In view of the facts and legal position brought out in above paragraphs, it is humbly requested to dismiss the assessee's additional grounds of appeal challenging the validity of the assessment order."*

5. We have considered the rival submissions. We find that in the written submissions filed by the Id. DR of revenue as reproduced above, this is the main contention that since in the assessment order, along with the name of the merged company, the name of the successor company is also mentioned, it cannot be said that the assessment is completed in the name of the merged

company. Regarding this submission of the Id. DR of revenue, we find that in the case of Principal CIT Vs. MarutiSuzuki India Ltd. (supra) also, the assessment order was passed in the name of M/s. Suzuki Powertrain India Ltd. (amalgamated with Maruti Suzuki India Ltd.) as noted by Hon'ble Delhi High court in the cited judgment. Hence, it is seen that in that case also, facts are same and still the issue was decided in favour of the assessee by Hon'ble Delhi High Court in that case by following another judgment of Hon'ble Delhi High court rendered in the case of Spice Infotainment Ltd. Vs. CIT as reported in 247 CTR 500 (Delhi). This judgement of Hon'ble Delhi High Court rendered in the case of Spice Infotainment Ltd. Vs. CIT (supra) has already been confirmed by the Hon'ble Apex Court. Hence in the present case also, we hold by respectfully following these judgments of Hon'ble Delhi High Court that the assessment order framed in the present case in the name of amalgamating company is bad in law and the same is quashed although we make it clear that the department may proceed for making assessment in the name of merged company i.e. Mindtree Ltd. in accordance with law in terms of provisions of the IT Act, 1961, as was held by Hon'ble Karnataka High Court in case of CIT Vs. M/s. Intel Technology India Pvt. Ltd. (supra).

6. In view of our decision in respect of additional grounds of the assessee, the main grounds raised in the appeal memo are not required to be adjudicated upon because when the assessment order itself is quashed, no further issue remains to be decided.
7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIT KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 08th December, 2017.
/MS/

Copy to:

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.