IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 1527/MUM/2014 (A.Y: 2009-10)

M/s. Siemens Technology and Services Pvt. Ltd., {Successor to Siemens Information Processing Services Pvt. Ltd.,} 130, Pandurang Budhkar Marg Worli, Mumbai – 400 018	*v.*	Deputy Commissioner of Income Tax - 7(2) Room No. 624, 6th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020
(Appellant)		**(Respondent)**

ITA NO. 1887/MUM/2014 (A.Y: 2009-10)

Dy. Commissioner of Income Tax - 7(2) Room No. 624, 6th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020	*v.*	M/s. Siemens Information Processing Services Pvt. Ltd., {Successor of Siemens Technology and Services Pvt. Ltd.,} 130, Pandurang Budhkar Marg Worli, Mumbai – 400 018
(Appellant)		**(Respondent)**

ITA NO. 1665/MUM/2015 (A.Y: 2010-11)

M/s. Siemens Technology and Services Pvt. Ltd., {Successor to Siemens Information Processing Services Pvt. Ltd.,} 130, Pandurang Budhkar Marg Worli, Mumbai – 400 018	*v.*	Asst. Commissioner of Income Tax, Circle - 8(2)(1) Room No. 624, 6th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020
(Appellant)		**(Respondent)**

ITA NO. 1779/MUM/2015 (A.Y: 2010-11)

Asst. Commissioner of Income Tax, Circle - 8(2)(1) Room No. 624, 6th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020	*v.*	M/s. Siemens Information Processing Services Pvt. Ltd., 130, Pandurang Budhkar Marg Worli, Mumbai – 400 018
(Appellant)		**(Respondent)**

Assessee by : Shri Nitesh Joshi.

Department by : Shri Debashis Chanda

Date of Hearing : 25.06.2019

Date of Pronouncement : 31.07.2019

O R D E R

PER C.N. PRASAD (JM)

ITA NO. 1587/MUM/2014 (A.Y: 2009-10) (Assessee appeal)

1. This appeal is filed by the assessee against the assessment order dated 24.01.2014 passed by Assessing Officer pursuant to the directions of the Dispute Resolution Panel-II, Mumbai [hereinafter in short "DRP"] u/s.144C(5) of the Act dated 28.11.2013 for the A.Y. 2009-10.

2. The assessee apart from challenging the Assessment Order in making transfer pricing adjustments pursuant to the direction of the DRP on merits, also challenged the validity of order of assessment passed by

the Assessing Officer by way of additional ground. The additional ground filed by the assessee reads as under: -

> *"Additional ground of appeal*
>
> *6. On the facts and in the circumstances of the case and in law, the Appellant submits that the impugned assessment order dated 24 January 2014 passed by the learned AO under Section 143(3) read with Section 144C(13) of the Income-tax Act, 1961, is bad in law as Siemens Information Processing Services Private Limited has ceased to exist on the date of the impugned order on account of its merger with Siemens Technology and Services Private Limited with effect from 01 October 201 1, thereby the entire assessment proceedings be regarded to be void ab-initio.*

3. The Ld. Counsel for the assessee submits that since the additional ground is purely legal ground going to the very jurisdiction and validity of Assessment Order the same be admitted. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. *v.* CIT [229 ITR 383]. Ld.DR strongly opposed for admission of additional ground.

4. On hearing both the parties, we are of the view that the additional ground raised by the assessee is purely a legal ground and going to the very jurisdiction and validity of the Assessment Order and no new facts have to be examined, the same is to be admitted following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. *v.* CIT (supra) thus the additional ground is admitted.

5. Briefly stated, the facts are, by virtue of an order passed by the Hon'ble Bombay High Court on 26.08.2011 an order approving the

scheme of amalgamation of M/s. Siemens Information Processing Services Pvt. Ltd., [hereinafter in short "SIPSPL"], the assessee in this case, was amalgamated with M/s. Siemens Technology and Services Pvt. Ltd., [hereinafter in short "STSPL"] w.e.f. 01.10.2011 and accordingly ceased to exist thereafter. The Assessing Officer passed order u/s.143(3) r.w.s. 144C(13) of the Act in the name of "M/s. Siemens Information Processing Services Pvt. Ltd., [successor of M/s. Siemens Technology Services Pvt. Ltd.,]" on 24.01.2014. Now it is the contention of the Ld.Counsel for the assessee that the erstwhile company namely SIPSPL ceased to exist on account of its merger with STSPL w.e.f. 01.10.2011 and consequently the Assessing Officer made an assessment on a non-existent entity. It is the submission of the Ld. Counsel for the assessee that the Assessing Officer proceeded to assess the income in the hands of the erstwhile company in spite of being intimated about the merger. The sequence of events in this regard were explained as under:

Sequence and description of events	Date	Reference
Order of Hon'ble Bombay High Court sanctioning the amalgamation with effect from 1 October 201 1	26 August 2011	Page 299-320 of paper book filed on 15 March 2017
Order of Hon'ble Karnataka. Bangalore High Court sanctioning the amalgamation with effect from 1 October 2011	30 September 2011	Page 321-345 of paper book filed on 15 March 2017
Letter filed with the learned AO intimating regarding the amalgamation	21 December 2011	Page 346 of paper book filed on 15 March 20 17
Letter filed with the learned AO intimating change of name of Siemens Information Systems Limited to Siemens Technology and Services Private Limited with effect from 23 April 2012	20 June 2012	Page 347-349 of paper book filed on 15 March 2017

Sequence and description of events	Date	Reference
Letter issued by the learned Assistant Commissioner of Income Tax, Circle-12(3). Bangalore to the learned Assistant/ Deputy Commissioner of Income-tax, Circle-7(2), Mumbai for transfer of case of the Appellant from Bangalore to Mumbai	26 December 2012	Page 350-351 of paper book filed on 15 March 2017
Order passed by the learned Transfer Pricing Officer under Section 92CA(3) of the Act	15 January 2013	Page 72-124 of the Appeal set dated 28 February 2014
Draft assessment order passed by the learned AO under Section 144C(1) read with Section 143(3) of the Act	18 February 2013	Page 66-71 of the Appeal set dated 28 February 2014
Directions of the Dispute Resolution Panel under Section 144C(5) of the Act	28 November 2013	Page 12-25 of the Appeal set dated 28 February 2014
Final assessment order passed by the learned AO under Section 143(3) read with Section 144C(13) of the Act	24 January 2014	Page 9-11 of the appeal set dated 28 February

6. Therefore, it was contended that post amalgamation the amalgamating company ceased to exist and accordingly assessment being made in the name of non-existing entity is illegal and bad in law. Thus, it is submitted that the assessment made in the name of SIPSPL should be quashed and be regarded as void ab-initio. Reliance was placed on the following decisions: -

(i). Jitendra Chandralal Navlani & Anr v/s. Union of India through Joint Secretary & Ors. (Writ Petition No. 1069 OF 2016 Bombay High Court)

(ii). IPSOS Research Private Limited (formerly known as Synovate India Private Limited) Vs. Additional Commissioner of Income Tax-Circle 11(2) (formerly known as Synovate India Private Limited) and IPSOS Research Private Limited (formerly known as Synovate India Private Limited) Vs. Deputy Commissioner of Income Tax-Circle 10(1)(1) (ITA. No. 1177/Mum/2015: 1TA. No. 1517/Mum/2016 Bombay High Court)

(iii). Commissioner Of Income Tax (C)-II Vs. Micra India Pvt Ltd (1TA 441/2013: 1TA 444/2013: 1TA 445/2013: 1TA 446/2013: 1TA 452/2013: IT A 461/2013 New Delhi High Court)

(iv). Commissioner of Income-tax. Central Circle, Bangalore Vs. Intel Technology India (P.) Ltd. (IT APPEAL NOS. 499 & 500 OF 2009 Karnataka High Court)

(v). l.K. Agencies (P.) Ltd. Vs. Commissioner of Wealth-tax (AWT NOS. 1 TO 3 OF 2003 (Calcutta High Court)

7. The Ld. Counsel for the assessee further submits that, even in the scenario wherein the name of the amalgamated company is merely referred in the Assessment Order after the name of the amalgamating company still the Assessment Order is invalid void ab-initio and bad in law. Strong reliance was placed on the following decisions:

(i). Principal Commissioner of Income-tax v. BMA Capfin Ltd. (Special Leave Petition (Civil) Diary No. 40486 OF 2018 Supreme Court)

(ii). Principal Commissioner of Income Tax. Central-2 v. BMA Capfin Ltd. (IT Appeal No. 1181 OF 2017 New Delhi High Court)

(iii). Maruti Suzuki India Ltd. v. Deputy Commissioner of Income-tax, Circle-16(1), New Delhi (IT APPEAL NO. 288 (DELHI) OF 2016 New Delhi High Court)

(iv). Pr. Commissioner Of Income Tax-6. New Delhi Vs. Maruti Suzuki India Limited (Successor Of Suzuki Powertrain India Limited) (ITA No. 65/2017 (New Delhi ITAT)

(v). Ambuja Cements Rajasthan Ltd. (since dissolved) Vs Assistant Commissioner of Wealth Tax-LTU (WTA NO. 11/MUM/2014 Mumbai ITAT).

8. However the Ld. DR submits that the Assessment Order dated 24.01.2014 passed by the Assessing Officer u/s. 143(3) r.w.s. 144C(13) of the Act was on the directions given by the DRP and in the DRP's order name of the assessee has been mentioned that M/s. Siemens Information Processing Services Pvt. Ltd.,(successor of M/s. Siemens Technology and Services Pvt. Ltd.,). Therefore, the Ld.DR submits that since the DRP has passed the order in the name of M/s. Siemens Technology and Services Pvt. Ltd., the amalgamated company the error committed by the

Assessing Officer in writing "Successor of" appears to be typographical error and it is an omission in terms of Section 292B of the Act.

9. Ld.DR further submits that even if it is held that the Assessment Order is in the name of the amalgamating company which ceased to exist from 01.10.2011 it is submitted that assessment for the A.Y. 2009-10 relevant to the Financial Year 2008-09, which the period prior to the date of amalgamation can be made in the name of the amalgamating company in view of the proviso of section 170(1)(a) of the Act, which provides that "in the case of succession of business, predecessor shall be assessed in respect of the income of the previous year in which succession took place, up to the date of succession". Ld. DR placed reliance in the case of Sky Light Hospitality LLP *v.* ACIT [92 taxmann.com 93 (SC)], CIT *v.* Shaw Wallace Distilleries Ltd. [386 ITR 14 (Calcutta)] and The Himalayan Drug Co. *v.* DCIT in IT(TP)A No. 807/Bang/2016 dated 21.06.2017.

10. We have heard the rival submissions, perused the orders of the authorities below. It is not in dispute that SIPSPL has been amalgamated with STSPL by virtue of an order pursuant to scheme of amalgamation by the Hon'ble Bombay High Court passed on 26.08.2011 and the merger is w.e.f 01.10.2011. It is not in dispute that the Assessing Officer was informed by the assessee by letter dated 21.12.2011 intimating the fact of

amalgamation and merger of SIPSPL with M/s. Siemens Information Systems Limited [hereinafter in short "SISL"] which was later changed to M/s. Siemens Technology and Services Pvt. Ltd. The change in the name was w.e.f 23.04.2012 even this fact was also informed to the Assessing Officer by the assessee by letter dated 20.06.2012. The letter dated 21.12.2011 submitted to the concerned Assessing Officer reads as under:

The Deputy Commissioner of Income-tax *Date December 21, 2011*
Circle-12 (3) 14/3, R,P. Bhavan
Nrupathunga Road, Opp-RBI,
Bangalore-560 001

Dear Sir,

Sub: Intimation regarding closure of business of M/s, Siemens Information Processing Services Private Limited, (PAN; AAFCS1164H, TAN: BLRS05124A) due to merger with M/s. Siemens Information Systems Limited.

We Would like to bring to your notice that vide order dated 30th September, 2011 passed by Hon'ble High Court of Karnataka, Bangalore with effect from 1st October, 2011 our company has been amalgamated with M/s. Siemens Information Systems Ltd, which has its registered office at 130, Pandurang Budhkar Marg, Worli, Mumbai - 400 018 and is assessed under the jurisdiction of Mumbai Range 7(2). The PAN of Siemens Information Systems Ltd. is AAACS9788 E

This is for your record and information please.

Yours Faithfully,
For Siemens Information Processing Services Private Limited

Authorized Signatory
Encl.: Copy –of High Court order

11. As could be seen from the above letter the Assessing Officer was intimated by the assessee that SIPSPL with PAN: AAFCS1164H has been merged with SISL with PAN: AAACS9788E, which was later name

changed to M/s. Siemens Technology and Services Pvt. Ltd., [STSPL] w.e.f 23.04.2012.

12. We also noticed that by letter dated 26.12.2012 the then Assessing Officer ACIT, Circle-12(3), Bangalore intimated the Assessing Officer of STSPL i.e. ACIT, Circle-7(2), Mumbai that consequent to merger of SIPSPL with STSPL by virtue of the order of the Hon'ble Karnataka High Court dated 30.09.2011 the assessment records are forwarded to ACIT and the ACIT, Circle 12(3), Bangalore has ceased all the jurisdiction over the SIPSPL as it has become a nonexistent company as on that date i.e. 26.12.2012.

13. Subsequently the Transfer Pricing Officer passed order u/s. 92CA of the Act on 15.01.2013 in the name of amalgamating company SIPSPL. Similarly, the draft Assessment Order was passed by the DCIT, Circle-7(2), Mumbai on 18.02.2013 in the name of M/s. Siemens Information Processing Services Pvt. Ltd., [successor M/s. Siemens Technology and Services Pvt. Ltd.,].

14. Ld. DRP also passed order in the name of M/s. Siemens Information Processing Services Pvt. Ltd., the amalgamating company (successor M/s. Siemens Technology and Services Pvt. Ltd.,) though in some of these orders it has been mentioned in brackets that SIPSPL is successor

of STSPL surprisingly in all these orders the PAN of the amalgamating company i.e. AAFCS1164H has been mention and not the amalgamated company PAN which is AAACS9788E. From the above, it is clear that the Assessing Officer made assessment on 24.01.2014 u/s. 143(3) r.w.s. 144C(13) of the Act only in the name of amalgamating company i.e. SIPSPL though it was ceased w.e.f. 01.10.2011 in spite of intimating the amalgamation and merger of SIPSPL with SISL which was later changed to STSPL.

15. The Hon'ble Delhi High Court in the case of CIT *v.* Dimension Apparels Pvt. Ltd., in ITA.No. 327/2014, C.M.NO. 10527/2014 dated 08.07.2014 had considered a situation whether the provisions of section 292B of the Act could cure the technical defects and also the provisions of section 170(1) and 170(2) of the Act and the Hon'ble High Court considered various decision 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 and Co. vs. Income Tax Officer (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 v. CIT, 1990 Supl. (1) SCR 332 in support of its contentions and the findings of the tax authorities below, i.e. the CIT (A) and the ITAT. Spice Entertainment Ltd. Vs. CIT - ITA No.475 of 2011, decided by a Division Bench of this Court, as well as an earlier decision in Commissioner of Income Tax v. Vived*

Marketing Servicing Pvt. Ltd. ITA No. 273/2009 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 (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 Pvt. Ltd. No. (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 assessmsent 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 Pvt. 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 (supra), this Court, after discussing the law declared by the Supreme Court in Saraswati Industrial Syndicate (supra) stated that:

> *"9. The Court referred to its earlier judgment in General Radio and Appliances Co. Ltd. Vs. 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. Vs. 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 (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 (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 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." (Emphasis Supplied)

21. In Spice (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, 275 ITR 595, that while Section 292B can cure technical defects, it cannot cure a "jurisdictional defect in the assessment notice." In Spice (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, 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 (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 Pvt. 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.

24. Accordingly, there is no merit in the appeals; they are accordingly dismissed along with the pending applications without any order as to costs."

16. The Hon'ble Karnataka High Court in the case of CIT *v.* Intel Technology India (P.) Ltd., (supra) held as under:

"4. This appeal was admitted by order dated 21.07.2010 on the substantial questions of law as had been framed in the memo which reads as under: -

(1) Whether the Tribunal was correct in holding that the order passed by the Assessing Officer on M/s Software & Silicon Systems India Pvt. Ltd., after being intimated about the merger with M/s Intel Technology India Pvt. Ltd., was without jurisdiction against the said company and null and void?

(2) Whether the Tribunal was correct in holding that the provisions of section 292B of the Act will not make the assessment valid as a defect/omission to incorporate the name of M/s Intel Technology India Pvt. Ltd., in the assessment order as the same is not in substance and effect in confirmative with or according to the intend and purpose of this Act?

(3) Whether the Tribunal has to examine the matter on merits and record finding on the controversy raised before it both by the revenue as well as the assessee in their separate appeals?

5. The tribunal had rejected the claim of the department on the ground that the assessment proceedings against SSS Limited (which was non-existent on the date of passing of the assessment order) cannot be held to be valid proceedings, learned counsel for the appellant has submitted that the return of income had been filed by the assessee-SSS Limited much prior to the amalgamation order dated 1.4.2004 and as such, the proceedings would continue against the said company even after the amalgamation, especially when the successor company - M/s Intel Technology India Pvt. Ltd. had participated in the proceedings. Learned counsel for the appellant further submits that the department would be entitled to the benefit of Section 292(B) of the Income Tax Act.

6. On the other hand, learned counsel for the respondent has submitted that any proceeding against a non-existing company would be null and void, especially after the respondent/company (which had succeeded M/s SSS Limited) had given notice of amalgamation to the department on 29.6.2004. It is thus submitted that after the issuance of the demand notice, it was for the department to substitute the respondent company in the proceedings for assessment and by not having done so, the entire assessment proceedings would be null and void. In support of his submission, learned counsel for the respondent has placed reliance on a Division Bench decision of the Delhi High Court rendered in Spice Infotainment Ltd. v. CIT [IT Appeal Nos. 475 & 476 of 2011, dated 3-8-2011]. It is contended that the facts of the present case are similar, if not identical, to the facts in the case of Spice Infotainment Ltd-, (supra) wherein the Delhi High Court has, after considering the various provisions of the Income Tax Act as well as certain decisions of the Apex

Court and other High Courts, clearly held that the framing of assessment against the non-existing entity/person goes to the root of the matter which is not a procedural irregularity, but, a jurisdictional defect and as there cannot be any assessment against the dead person.

7. In the present case also, the proceedings had been initiated against a non-existing company/SSS Limited even after the amalgamation of the said company with M/s Intel Technology India Pvt. Ltd.. We do not see any good ground to differ with the said judgment of the Delhi High Court.

8. Accordingly, for the reasons given in the judgment of the Delhi High Court in the case of Spice Infotainment Ltd. (supra], these appeals are dismissed and we decide the substantial questions of law in favour of the assessee and against the revenue."

17. In the case of Spice Infotainment Ltd. *v.* CIT in ITA.No. 475 & 476 of 2011 dated 03.08.2011 the Hon'ble Delhi High Court held as under:

"12. 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. 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 Vs. 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 Vs. 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 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 Vs. 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 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."

18. We also observe that the appeal filed by the Revenue against this judgment of the Hon'ble Delhi High Court was dismissed by the Hon'ble

Supreme Court on 02.11.2017 affirming the decision of the High Court wherein it has been held that framing of assessment against a non-existing entity goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect and therefore there cannot be any assessment against a dead person and the provisions of section 292B of the Act have no application.

19. The Hon'ble Delhi High Court in the case of Pr.CIT *v.* BMA Capfin Ltd. [100 taxmann.com 329] held as under: -

> *"1. The revenue is aggrieved by the decision of the Income Tax Appellate Tribunal ("ITAT") which upheld the appellate Commissioner's order nullifying the assessments made for AY 2012-13. In this case M/s Xenial Investments Pvt. Ltd., the original assessee filed a return of income on 01.11.2004 under Section 115JB of the Income-tax Act, 1961. The original assessment was completed but the matter was remitted on two occasions. In the third round, in reply to notice, the assessee had indicated that it underwent an entity change inasmuch as merger and amalgamation had been approved by the Court vide order dated 10.10.2013 w.e.f. 01.04.2012. Apparently, the AO took note of this development but instead of completing the assessment in the hands and in the name of the amalgamated or merged entity, i.e., Adhunik Technology Pvt. Ltd., it proceeded to complete the separate assessment in the name of the (by then) non-existent entity, i.e., M/s Xenial Investments Pvt. Ltd. Applying the ratio of the decision of this Court in Spice Entertainment v. CIT [IT Appeal No. 475 of 2011] and CIT v. Dimension Apparel (P., Ltd. [20141 52 taxmann.com 356/[2015] 370 ITR 288 (Delhi), the ITAT upheld the CIT (A)'s decision and held that the assessment was a nullity.*
>
> *2. The revenue urges in support of its appeal that the distinguishing feature of this case is that after repeated remand, the AO completed the assessment after noticing that the matter had been centralized under Section 127 and further taken care to mention the name of the merged or amalgamated entity, i.e., Adhunik Technology Pvt. Ltd.*
>
> *3. In the opinion of the Court, the settled position indicated arising from the string of judgment, i.e., Spice Entertainment (supra) onward still CIT v. Vivid Marketing Services (P) Ltd. [IT Appeal No. 273 of 2009], is in no way distinguishable. The rationale for holding that even Section 292B is in applicable in all these cases consistently was that once the corporate entity is merged with another, i.e., transferee corporation or entity, the assessment had to be completed in the latter's hands. In the present case, the revenue despite being intimated did not complete the assessment in a composite manner in the hands of the Adhunik Technology Pvt. Ltd. Clearly they were notified about the development as the assessee was duty bound to. Despite that, the Revenue persisted in completing a separate assessment order in respect of an entity which was not in existence.*

4. For these reasons, following the previous reasons, it is held that no question of law arises; the appeal is, therefore, dismissed.

20. Special Leave Petition filed by the department has been dismissed by the Hon'ble Supreme Court which is reported in 100 taxmann.com 330.

21. Hon'ble Delhi High Court in the case of Pr.CIT *v.* Maruti Suzuki India Limited (successor of Suzuki Powertrain India Limited) in ITA.No. 65 of 2017 held as under: -

"3. On 24th January 2017, while admitting this appeal, this Court framed the following question of law: "Did the ITAT misapply the provisions of Section 170 (2) of the Income Tax Act in the circumstances of the case, while concluding that the assessment order was not tenable for having been framed in the name of the non-existent company."

4. The facts are that on 28th November 2011 Suzuki Powertrain India Ltd. ('SPIL') filed its return for AY 2011-12 declaring an income of Rs. 76,08,30,888/-. The return was processed under Section 143 (1) of the Income Tax Act, 1961 ('Act') and then picked up for scrutiny. Notices under Section 143 (2) of the Act were issued.

5. On 29th January 2013, this Court passed an order in Company Petition No. 490 of 2012 approving the Scheme of Amalgamation ('Scheme') by which SPIL (Amalgamating Company) was amalgamated with Maruti Suzuki India Ltd. ('MSIL') (Amalgamated Company) with effect from 1st April 2012 (the 'appointed date'). The Scheme inter alia provided that, "all the liabilities and duties on the entire undertaking of the Petitioner/Amalgamating Company be transferred without further act or deed to the Petitioner/Amalgamated Company and accordingly the same shall pursuant to Section 394 (2) of the Companies Act, 1956 be transferred to and become the liabilities of the Petitioner/Amalgamated Company."

6. Thereafter, assessment proceedings continued with the participation of ITA 65/2017 Page 3 of 8 MSIL representing SPIL in the assessment proceedings.

7. On 29th December 2015, the AO passed the assessment order under Section 143 (3) read with Section 144C (1) of the Act in which the name and address of the Assessee was shown as:

"M/s. Suzuki Powertrain India Ltd
(Amalgamated with M/s Maruti
Suzuki India Ltd)., Plot No 1,
Nelson Mandela Road, Vasant
Kunj, New Delhi-110070"

8. MSIL filed an appeal before the ITAT where one of the grounds urged was that the assessment order was without jurisdiction inasmuch as it had been passed in the name of an entity that ceased to exist on the date of the assessment order. The ITAT accepted the above plea of the RespondentMSIL, as a result of which the assessment order was set aside.

9. On the strength of the decision of the Supreme Court in Kuldeep Kumar Dubey v. Ramesh Chandra Goyal (2015) 3 SCC 525, Mr. Asheesh Jain, learned Senior Standing Counsel for the Revenue, urges that in the present case the error, if at all, was a mere misdescription of the party in the assessment order and nothing more. This could not result in the assessment order itself being set aside. He further submits that the record of the assessment proceedings shows that MSIL participated in it fully and raised no objection as to the continuation of the proceedings on the ground of lack of jurisdiction. Mr Jain invokes Section 292B of the Act to urge that the Assessee is precluded from questioning the assessment order on the ground that it was passed in the name of a non-existent entity. He points out that below the name of the Amalgamating Company, the AO has taken care to mention that it has since been amalgamated with MSIL.

10. In reply, Mr. Ajay Vohra, learned Senior Counsel for the Assessee, has drawn the attention of the Court to a long line of decisions including Saraswati Industrial Syndicate Ltd. v. CIT [1990] 186 ITR 278 (SC) and Spice Infotainment Ltd. v. CIT (2011) 247 CTR (Del) 500 wherein an identical question has been answered in favour of the Assessee and against the Revenue. Mr. Vohra points out that for the purposes of Section 170 (2) of the Act, two assessment orders will have to be passed: one in the name of MSIL itself for the AY in question and the other again in the name of MSIL indicating that the said assessment order is being passed under Section 170 (2) of the Act in respect of its tax liability as successor in interest of the Amalgamating company.

11.1 In Spice Infotainment (supra), the issue that arose was in the context of the AO having framed the assessment in the name of 'Spice Corp Limited' after the said entity stood dissolved consequent to its amalgamation with 'MCorp Private Limited' with effect from 1 st July, 2003. Like in the present case, even there it was urged by the Revenue that this was a procedural defect. It was also urged by the Revenue that since the amalgamated entity had participated in the assessment proceedings without raising any objection, it should be precluded from raising it thereafter.

11.2 The two questions framed by this Court in Spice Infotainment (supra) were as under:

> *"(i) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the action of the Assessing Officer in framing assessment in the name of "Spice Corp Ltd", after the said entity stood dissolved consequent upon its amalgamation with Mcorp Private Limited w.e.f. 01.07.2003, was a mere "procedural defect"?*
>
> *(ii) whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that in view of the provisions of section 292B of the Act, the assessment, having in substance and effect, been framed on the amalgamated company which could not be regarded as null and void?"*

11.3 This Court, in Spice Infotainment (supra) discussed and noted the following observations in the decision of the Supreme Court in Saraswati Industrial Syndicate (supra):

> *"Generally, where only one Company is involved in change and the rights of the shareholders 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 shareholders of each blending Company become*

substantially the shareholders 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."

11.4 The Court in Spice Infotainment (supra) thereafter held as under: "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.

11.5 Consequently, the aforesaid two questions were answered in favour of the Assessee and against the Revenue.

12. Even thereafter the Revenue has repeatedly brought the said issue before this Court in a large number of cases where, in more or less identical circumstances, the AO had passed the assessment order in the name of the entity that had ceased to exist as on the date of the assessment order. In many of these cases, as in the present case, the AO, after mentioning the name of the Amalgamating Company as the Assessee, mentioned below it the name of the Amalgamated Company. Illustratively the cases are: (i) CIT v Micra India (P) Ltd. (2015) 231 Taxman 809 (Del); (ii) CIT v. Micron Steels (P) Ltd. [2015] 372 ITR 386 (Del) (iii) CIT v. Dimensions Apparels (P) Ltd. [2015] 370 ITR 288 (Del) (iv) BDR Builders & Developers Pvt. Ltd. v. ACIT (Decision dated 26th July 2017 passed by this Court in W.P.(C) No. 2712 of 2016

13. The question whether, for the purposes of Section 170 (2) of the Act, the defect of passing the assessment order in the name of an non-existent entity is a mere irregularity was answered by this Court in CIT v. Dimensions Apparels (P) Ltd. (supra), where in paras 6 and 7 it was held as under:

"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)."*

14. The submission that under Section 292B of the Act, the successor-ininterest is precluded from raising an objection if it has participated in the assessment proceedings was negative in Spice Infotainment (supra) where it was held: "...once it is found that the assessment is framed in the name of a non-existent entity it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292-B of the Act."

15. On the issue of participation, the Court CIT v. Dimensions Apparels (P) Ltd. (supra) observed:

> *"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 (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 Pvt. Ltd., (supra) had also reached the same conclusion."*

16. The legal position having been made abundantly clear in the above decisions, the Court has no hesitation in answering the question framed in the negative, i.e. in favour of the Assessee and against the Revenue."

22. Very recently, the Hon'ble Supreme Court in the case of Pr.CIT *v.* Maruti Suzuki India Limited in Civil Appeal No. 5409 of 2019 by order dated 25.07.2019 considering and distinguishing the decision in the case of Skylight Hospital LLP *v.* ACIT (supra) on which the Ld.DR relied on, held as under:

> *"17 Mr Zoheb Hossain, learned Counsel appearing on behalf of the appellant submitted that:*
>
> *(i) The High Court was not justified in quashing the final assessment order under Section 143 (3) only on the ground that the assessment was framed in the name of the amalgamating company, which was not in existence, ignoring the fact that the names of both the amalgamated company and the amalgamating company were mentioned in the assessment order;*
>
> *(ii) Even on the hypothesis that the assessment order was framed incorrectly in the name of the amalgamating company, it would amount to a "mistake, defect or omission" which is curable under Section 292B when the assessment is, "in substance and effect, in conformity with or according to the intent and purpose" of the Act;*

(iii) During the assessment proceedings and the subsequent proceedings in appeal, the amalgamating company was duly represented by the amalgamated company. No prejudice was caused to any of the parties by the assessment order and hence rendering the assessment order invalid on a 'mere technicality' would be incorrect in law. There was effective participation of the assessee in the assessment proceedings and there was no doubt in the minds of those who participated about the entity in relation to which the assessment proceedings took place;

(iv) In Spice Entertainment Ltd. v Commissioner of Service Tax ("Spice Entertainment"), the final assessment order only referred to the name of the erstwhile entity which was non-existent and there was no reference to the resulting company. In distinction, in the present case, in both the draft and the final assessment orders, the names of both the amalgamating and amalgamated companies were mentioned;

(v) In paragraph 11 of the decision of the Delhi High Court in Spice Entertainment, it was held that:

> *"11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exist 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."*

From the above extract, it would emerge that if an assessment order had been passed on the resulting company, it would not be void. Hence, in the present case, the issuance of a notice under Section 143 (2) to SPIL cannot be considered to be a jurisdictional effect when the assessment order categorically mentions the names of the amalgamated and amalgamating companies;

(vi) The decision of the Delhi High Court in Skylight Hospitality LLP v Assistant Commissioner of Income Tax, Circle-28(1), New Delhi12 ("Skylight Hospitality LLP"), which was confirmed by this Court on 6 April 201813 dealt with a situation where a notice under Section 148 was issued in the name of a non-existent private limited company. The Court held that the defect in recording the name of a non-existent company in a notice under Section 148 was a procedural defect or mistake curable under Section 292B, since no prejudice was caused to the assessee. The Delhi High Court distinguished the decision in Spice Entertainment on the ground that in that case even the final assessment order was in the name of a non-existent company;

(vii) In the present case, both the draft assessment order and the final assessment order contained the names of the amalgamated and amalgamating companies and hence it cannot be held that the final order is in the name of a non-existent company. The order of the TPO is not the subject of a challenge by the assessee before any forum. The directions of the TPO were implemented by the assessing officer in the draft assessment order in accordance wi Section 144C(1) which was then

challenged by the assessee before the DRP under Section 144C(2). Since the names of both the amalgamated and amalgamating companies were mentioned in the draft assessment order and final assessment order, there is no jurisdictional defect;

(viii) In view the decision of this Court in Kunhayammed v State of Kerala ("Kunhayammed"), though the doctrine of merger does not apply when a Special Leave Petition is dismissed before the grant of leave to appeal, where an order rejecting a Special Leave Petition is a speaking order and reasons have been assigned for rejecting the petition, the law stated or declared in such an order will attract Article 141; and

(ix) Consequently, in the alternative, in view of the order passed by this Court on 6 April 2018 in Skylight Hospitality LLP on the one hand and the order dated 16 July 2018 in the case of the present assessee for AY 2011-12 and the earlier order dated 2 November 2017 in CIT, New Delhi v Spice Enfotainment Ltd.("Spice Enfotainment Ltd"), there appears to be a direct conflict of views on the principle whether a notice issued to a non-existent company would suffer from a jurisdictional error or whether it is a mere defect or mistake which would be governed by Section 292B.

18 On the other hand, Mr Ajay Vohra, learned Senior Counsel appearing on behalf of the respondents submitted that:

(i) Upon a scheme of amalgamation being sanctioned, the amalgamated company is dissolved without winding up, in terms of Section 394 of the Companies Act 1956. The amalgamating company ceases to exist in the eyes of law [Saraswati Industrial Syndicate Ltd. v CIT ("Saraswati Industrial Syndicate Ltd.")];

(ii) The amalgamating company cannot thereafter be regarded as a "person" in terms of Section 2(31) of the Act 1961 against whom assessment proceedings can be initiated and an assessment order passed;

(iii) The jurisdictional notice under Section 143(2) of the Act, pursuant to which the assessing officer assumed jurisdiction to make an assessment was issued in the name of SPIL, a non-existent entity, and was invalid. Hence the initiation of assessment proceedings against a non-existent entity was void ab initio.

- *It has been held in the following decisions that, if a statutory notice is issued in the name of a non-existent entity, the entire assessment would be a nullity in the eyes of law:*

  - *CIT v Intel Technology India (P) Ltd*
  - *PCIT v Nokia Solutions & Network India (P) Ltd. ("Nokia Solutions")*
  - *Spice Entertainment*
  - *Similarly, a notice to the amalgamating company, subsequent to the amalgamation becoming effective and despite the fact of the amalgamation having been brought to the notice of the assessing officer, is void ab initio as held in the following decisions:*
  - *BDR Builders and Developers Pvt. Ltd. v ACIT*
  - *Rustagi Engineering Udyog (P.) Ltd. v DCIT*

- *Khurana Engineering Ltd. v DCIT*

- *Takshashila Realties (P) Ltd. v DCIT*

- *Alamelu Veerappan v ITO23 ("Alamelu Veerappan")*

(iv) The order passed by the TPO in the name of SPIL, a non-existent entity was invalid in the eyes of the law:

- *SPIL ceased to be an "eligible assessee", in terms of section 144C (15) (b) of the Act. Consequently, there was no requirement to pass a draft assessment order/reference to DRP etc.; and*

- *Furthermore, the final assessment order dated 31 October 2016 is beyond limitation in terms of Section 153(1) read with Section 153 (4) of the Act.*

(v) The assessment framed in the name of the amalgamating Company is invalid:

- *In terms of Section 170(2) of the Act, once the amalgamation is effective, assessment in respect of the income of the amalgamating company upto the appointed date has to be in the name of the amalgamated company as successor in interest of the amalgamating company.*

- *The Delhi High Court has held in Spice Entertainment that an assessment framed in the name of the amalgamating company, which ceased to exist in the eyes of law, was invalid and untenable in law. Such a defect would not be cured in terms of Section 292B of the Act. Further, the fact that the amalgamated company participated in the assessment proceedings would not operate as estoppel.*

- *Following the aforesaid decision of the High Court in the case of Spice Entertainment, the Delhi High Court quashed assessment orders which were framed in the name of an amalgamating company, recording also the name of the amalgamated company, in the following cases:*

  - *CIT v Dimension Apparels Pvt. Ltd24 ("Dimension Apparels"); affirmed by this Hon'ble Court vide Civil Appeal No. 3125 of 2015;*

  - *CIT v Micron Steels P. Ltd. ("Micron Steels"); and*

  - *CIT v Micra India (P) Ltd. ("Micra India")*

The aforesaid judgments of the Delhi High Court have been approved by this Court in Civil Appeal No.285 of 2014 (& other connected matters). Thus applying the doctrine of merger, the law laid down by the Delhi High Court has become a precedent under Article 141.

(vi) The Respondent's case is squarely covered by the decision of this Court in its own case for the immediately preceding year:

- *The Delhi High Court by its judgment reported in Maruti Suzuki held in favour of the Respondent by following the judgment in the case of Spice Entertainment.*

- *Further, the Revenue's SLP was dismissed by this Court on 16 July 2018 in SLP(C) D.No.14106/2018, following the judgment in Spice Entertainment.*

- *Relying on the decision of this Hon'ble Court, in the following decisions, assessments framed in the case of a non-existent entity (the amalgamating company) have been held to be non-est in the eyes of law:*

- CIT v BMA Capfin Ltd. (Revenue's SLP dismissed against the same vide order dated 19 November 2018 passed in SLP(C) Diary No.40486 of 2018).

- Nokia Solutions

(vii) The judgment of the Delhi High Court in Skylight Hospitality LLP is distinguishable and is not applicable to the facts of the present case:

- *The judgment was rendered on its own peculiar facts.*

- *In that case, the tax evasion petition mentioned the factum of conversion of the company into a Limited Liability Partnership, which was also noticed in the reasons to believe and approval of the Principal Commissioner (before issuance of a notice under Section 148 of the Act). However, only because of a clerical mistake, the notice was wrongly issued in the name of Skylight Hospitality Pvt. Ltd. instead of Skylight Hospitality LLP.*

- *In the aforesaid facts, the High Court held that this was an irregularity and procedural/ technical lapse which was curable under section 292B of the Act.*

- *The decision in the case of Spice Enfotainment was not followed on the ground that it pertained to the passing of an assessment order in the name of a non-existent entity whereas the case at hand dealt with a notice under Section 148 of the Act.*

- *The SLP filed by the assessee against the decision of the Delhi High Court was dismissed recording: "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 292B of Act 1961";*

- *Subsequently, various High Courts, including the Delhi High Court have in the following decisions distinguished the judgment in the case of Skylight Hospitality LLP and have quashed the notice/assessment framed in the name of a non-existent entity:*

- *Rajender Kumar Sehgal v ITO ("Rajender Kumar Sehgal")*
- *Chandreshbhai Jayantibhai Patel v ITO ("Chandreshbhai Jayantibhai Patel"); and*
- *Alamelu Veerappan*

19. While assessing the merits of the rival submissions, it is necessary at the outset to advert to certain significant facets of the present case:

(i) Firstly, the income which is sought to be subjected to the charge of tax for AY 2012-13 is the income of the erstwhile entity (SPIL) prior to amalgamation. This is on account of a transfer pricing addition of Rs. 78.97 crores;

(ii) Secondly, under the approved scheme of amalgamation, the transferee has assumed the liabilities of the transferor company, including tax liabilities;

(iii) Thirdly, the consequence of the scheme of amalgamation approved under Section 394 of the Companies Act 1956 is that the amalgamating company ceased to exist. In Saraswati Industrial Syndicate Ltd., the principle has been formulated by this Court in the following observations:

> *"5. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation of 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 shareholders of each blending company become substantially the shareholders 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: Halsbury's Laws of England (4th edition volume 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."*

(iv) Fourthly, upon the amalgamating company ceasing to exist, it cannot be regarded as a person under Section 2(31) of the Act 1961 against whom assessment proceedings can be initiated or an order of assessment passed;

(v) Fifthly, a notice under Section 143 (2) was issued on 26 September 2013 to the amalgamating company, SPIL, which was followed by a notice to it under Section 142(1);

(vi) Sixthly, prior to the date on which the jurisdictional notice under Section 143 (2) was issued, the scheme of amalgamation had been approved on 29 January 2013 by the High Court of Delhi under the Companies Act 1956 with effect from 1 April 2012;

(vii) Seventhly, the assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under Section 143 (2). The notice was issued in the name of the amalgamating company in spite of the fact that on 2 April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation. In the above conspectus of the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio.

20. In Spice Entertainment, a Division Bench of the Delhi High Court dealt with the question as to whether an assessment in the name of a company which has been amalgamated and has been dissolved is null and void or, whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The High Court held that upon a notice under Section 143 (2) being addressed, the amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void. This, in the view of the High Court, was not merely a procedural defect. Moreover, the participation by the amalgamated company would have no effect since there could be no estoppel against law:

> *"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 an 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 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."*

Following the decision in Spice Entertainment, the Delhi High Court quashed assessment orders which were framed in the name of the amalgamating company in:

(i) Dimension Apparels;
(ii) Micron Steels; and
(iii) Micra India.

21. In Dimension Apparels, a Division Bench of the Delhi High Court affirmed the quashing of an assessment order dated 31 December 2010. The Respondent had amalgamated with another company and thus, ceased to exist from 7 December 2009. The Court rejected the argument of the Revenue that the assessment was in substance and effect in conformity with the Act by reason of the fact that the assessing officer had used correct nomenclature in addressing the Assessee; stated the fact that the company had amalgamated and mentioned the correct address of the amalgamated company. It was the Revenue's contention that the omission on the part of the assessing officer to mention the name of the amalgamated company is a procedural defect. The Delhi High Court rejected this contention. In doing so, it relied on the holding in Spice Entertainment, where the High Court expressly clarified that "the framing of assessment against a non-existing entity/person" is a jurisdictional defect. The Division Bench also relied on the holding in Spice Entertainment that participation by the amalgamated company in proceedings does not cure the defect as "there can be no estoppel in law", to affirm the quashing of the assessment order.

22 In Micron Steels, a notice was issued to Micron Steels Pvt Ltd (original assessee) after it had amalgamated with Lakhanpal Infrastructure Pvt Ltd. A Division Bench of the Delhi High Court upheld the setting aside of assessment

orders, noting that Spice Entertainment is an authority for the proposition that completion of assessment in respect of a non-existent company due to the amalgamation order, would render the assessment a nullity.

23. In Micra India, the original assessee Micra India Pvt. Ltd had amalgamated with Dynamic Buildmart (P) Ltd. Notice was issued to the original assessee by the Revenue after the fact of amalgamation had been communicated to it. The Court noted that though the assessee had participated in the assessment, the original assessee was no longer in existence and the assessment officer did not the take the remedial measure of transposing the transferee as the company which had to be assessed. Instead, the original assessee was described as one in existence and the order mentioned the transferee's name below that of the original assessee. The Division Bench adverted to the judgment in Dimension Apparels wherein the High Court had discussed the ruling in Spice Entertainment. It was held that this was a case where the assessment was contrary to law, having been completed against a non-existent company.

24. A batch of Civil Appeals was filed before this Court against the decisions of the Delhi High Court, the lead appeal being Spice Enfotainment. On 2 November 2017, a Bench of this Court consisting of Hon'ble Mr Justice Rohinton Fali Nariman and Hon'ble Mr Justice Sanjay Kishan Kaul dismissed the Civil Appeals and tagged Special Leave Petitions in terms of the following order :

> *"Delay condoned.*
> *Heard the learned Senior Counsel appearing for the parties.*
> *We do not find any reason to interfere with the impugned judgment(s) 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."*

25. The doctrine of merger results in the settled legal position that the judgment of the Delhi High Court stands affirmed by the above decision in the Civil Appeals.

26. The order of assessment in the case of the respondent for AY 2011-12 was set aside on the same ground. This resulted in a Special Leave Petition by the Principal Commissioner of Income Tax – 6 Delhi. The Special Leave Petition was dismissed by a two judge Bench of this Court consisting of Hon'ble Mr Justice Rohinton Fali Nariman and Hon'ble Ms Justice Indu Malhotra on 16 July 2018 in view of the order dated 2 November 2017 governing Civil Appeal No. 285 of 2014 in Spice Enfotainment and the connected batch of cases. Though, leave was not granted by this Court, reasons have been assigned by this Court for rejecting the Special Leave Petition. The law declared would attract the applicability of Article 141 of the Constitution. For, as this Court has held in Kunhayammed:

> *"40 Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be*

subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger

27. 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 which was affirmed on 6 April 2018 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 April 2018 of this Court:

> *"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 292B of the Income Tax Act.*
>
> *The special leave petition is dismissed.*
>
> *Pending applications stand disposed of."*

Now, it is evident from the above extract that it was in the peculiar facts of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 292B. The "peculiar facts" of Skylight Hospitality emerge from the decision of the Delhi High Court. Skylight Hospitality, an LLP, had taken over on 13 May 2016 and acquired the rights and liabilities of Skylight Hospitality Pvt. Ltd upon conversion under the Limited Liability Partnership Act 200835. It instituted writ proceedings for challenging a notice under Sections 147/148 of the Act 1961 dated 30 March 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 the 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 292B for the following reasons:

> *"18. There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s. Skylight Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."*

28 The decision in Spice Entertainment was distinguished with the following observations:

> *"19. Petitioner relies on Spice Infotainment Ltd. v. Commissioner of Service Tax, (2012) 247 CTR 500 Spice Corp. Ltd., the company that had filed the return, had amalgamated with another company. After notice under Section 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 Section 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."*

29. From a reading of the order of this Court dated 6 April 2018 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 292B. The decision in Skylight Hospitality LLP has been distinguished by the Delhi, Gujarat and Madras High Courts in:

(i) Rajender Kumar Sehgal;
(ii) Chandreshbhai Jayantibhai Patel; and
(iii) Alamelu Veerappan.

30. There is no conflict between the decisions of this Court in Spice Enfotainment (dated 2 November 2017)36 and in Skylight Hospitality LLP (dated 6 April 201837).

31. 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 292B. A close reading of the order of this Court dated 6 April 2018, 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 292B. Thus, there is no conflict between the decisions in Spice Enfotainment on the one hand and Skylight Hospitality LLP on the other hand. It is of relevance to refer to Section 292B of the Income Tax Act which reads as follows: "

> *"292B. No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake,*

defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.

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. (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 assesseed 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 assesseed 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, assesseed on the predecessor, cannot be recovered from him, the 99[Assessing] Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assesseed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section. Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession"

Now, in the present case, learned Counsel appearing on behalf of the respondent submitted that SPIL ceased to be an eligible assessee in terms of the provisions of Section 144C read with clause (b) of sub section 15. Moreover, it has been urged that in consequence, the final assessment order dated 31 October 2016 was beyond limitation in terms of Section 153(1) read with Section 153 (4). For the purposes of the present proceeding, we do not consider it necessary to delve into that aspect of the matter having regard to the reasons which have weighed us in the earlier part of this judgment.

32. On behalf of the Revenue, reliance has been placed on the decision of this Court in Commissioner of Income Tax, Shillong v Jai Prakash Singh ("Jai Prakash Singh"). That was a case where the assessee did not file a return for three assessment years and died in the meantime. His son who was one of the legal representatives filed returns upon which the assessing officer issued notices under Section 142 (1) and Section 143 (2). These were complied with and no objections were raised to the assessment proceedings. The assessment order mentioned the names of all the legal representatives and the assessment was made in the status of an individual. In appeal, it was contended that the assessment proceedings were void as all the legal representatives were not given notice. In this backdrop, a two judge Bench of this Court held that the assessment proceedings were not null and void, and at the worst, that they were defective. In this context, reliance was placed on the decision of the Federal Court in Chatturam v CIT39 holding that the jurisdiction to assess and the liability to pay tax are not conditional on the validity of the notice: the liability to pay tax is founded in the charging sections and not in the machinery provisions to determine the amount of tax. Reliance was also placed on the decision in Maharaja of Patiala v CIT40 ("Maharaja of Patiala"). That was a case where two notices were issued after the death of the assessee in his name, requiring him to make a return of income. The notices were served upon the successor Maharaja and the assessment order was passed describing the assessee as "His Highness…late Maharaja of Patiala". The successor appealed against the assessment contending that since the notices were sent in the name of the Maharaja of Patiala and not to him as the legal representative of the Maharaja of Patiala, the assessments were illegal. The Bombay High Court held that the successor Maharaja was a legal representative of the deceased and while it would have been better to so describe him in the notice, the notice was not bad merely because it omitted to state that it was served in that capacity. Following these two decisions, this Court in Jai Prakash Singh held that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where the liability is created by a distinct substantive provision. The omission or defect may render the order irregular but not void or illegal. Jai Prakash Singh and the two decisions that it placed reliance upon were evidently based upon the specific facts. Jai Prakash Singh involved a situation where the return of income had been filed by one of the legal representatives to whom notices were issued under Section 142(1) and 143(2). No objection was raised by the legal representative who had filed the return that a notice should also to be served to other legal representatives of the deceased assessee. No objection was raised before the assessing officer. Similarly, the decision in Maharaja of Patiala was a case where the notice had been served on the legal representative, the successor Maharaja and the Bombay High Court held that it was not void merely because it omitted to state that it was served in that capacity.

33. 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 co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on 2 November 2017. The decision in Spice Enfotainment 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.

34 We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."

23. As could be seen from the above the Hon'ble Supreme Court held that 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. It has been held that 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. Hon'ble Supreme Court also observed that participation in the proceedings by the assessee in the circumstances cannot operate as an estoppel against law. It was also held that this position holds the field in view of their judgment in the case of Spice Enotainment delivered on 02.11.2017.

24. In the case on hand it is undoubtedly the assessment was made by the Assessing Officer on SIPSPL the amalgamating company which was

amalgamated with STSPL w.e.f 01.10.2011 and accordingly ceased to exist thereafter. Therefore, when the assessment was made on an non existing entity the said assessment is void ab-initio and nullity in the eye of law. Assessment framed against a non-existing entity goes to the root of the matter and it is not a procedural irregularity but a jurisdictional defect and there cannot be any assessment against a non-existing entity or a dead person. Therefore, the decision of the Hon'ble Supreme Court in the case of Pr.CIT *v.* Maruti Suzuki India Limited (supra) squarely applies to the facts of the assessee's case. Respectfully following the decision of the Hon'ble Supreme Court, we hold that the assessment made by the Assessing Officer in the name of the amalgamating company i.e. SIPSPL dated 24.01.2014 u/s. 143(3) r.w.s. 144C(13) of the Act for the A.Y.2009-10 is void ab-initio and bad in law. Hence the assessment order is a nullity in the eye of law and the same is quashed. The additional ground raised by the assessee is allowed.

25. As the assessment was quashed on preliminary ground, all other grounds on merits are not adjudicated as they became only academic.

ITA NO. 1887/MUM/2014 (A.Y: 2009-10) (Revenue appeal)

26. Since the Assessment Order dated 24.01.2014 passed u/s.143(3) r.w.s. 144C(13) of the Act for the A.Y. 2009-10 is quashed the Revenue's appeal in ITA.No. 1887/MUM/2014 becomes infructuous and the same is dismissed as infructuous.

ITA.No. 1665/MUM/2015 (2010-11) (Assessee appeal)

27. Facts being identical, the decision taken therein for A.Y. 2009-10 applies mutatis mutandis for the A.Y. 2010-11. Thus, following our above order for the A.Y.2009-10, we hold that the Assessment Order dated 28.01.2015 passed u/s. 143(3) r.w.s. 144C(13) of the Act for the A.Y.2010-11 is a nullity in the eye of law and the same is quashed. The additional ground raised by the assessee is allowed.

28. As the assessment was quashed on preliminary ground, all other grounds on merits are not adjudicated as they became only academic.

ITA.No. 1779/MUM/2015 (Revenue appeal)

29. Since the Assessment Order dated 28.01.2015 passed u/s.143(3) r.w.s. 144C(13) of the Act for the A.Y. 2010-11 is quashed the Revenue's appeal in ITA.No. 1779/Mum/2015 becomes infructuous and the same is dismissed as infructuous.

30. In the result, appeals of the assessee are partly allowed and appeals of the Revenue are dismissed.

Order pronounced in the open court on the 31st July, 2019.

Sd/-	Sd/-
(N.K. PRADHAN)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai / Dated 31/07/2019
Giridhar, SPS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum