

**IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH  
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM  
&  
SHRI M.BALAGANESH, AM**

**ITA No.1554/Mum/2016  
(Assessment Year :2011-12)**

M/s. ATOS IT Solutions and Services Pvt. Ltd., (Now Merged with ATOS India Pvt. Ltd.) Godrej & Boyce Complex Plant No.5, Pirojshanagar LBS Marg Vikhroli (West) Mumbai – 400 079	Vs.	Deputy Commissioner of Income Tax- 14(1)(1) Aayakar Bhavan Mumbai
<b>PAN/GIR No. AAOCS0752L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Dhanesh Bafna & Shri Arpit Agarwal
Revenue by	Shri Anand Mohan
<b>Date of Hearing</b>	<b>30/09/2019</b>
<b>Date of Pronouncement</b>	<b>24/12/2019</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.1554/Mum/2016 for A.Y. 2011-12 preferred by the order against the final assessment order passed by the Assessing Officer dated 27/01/2016 u/s.143(3) r.w.s.144C(13) of the Income Tax Act, hereinafter referred to as Act, pursuant to the directions of the Id. Dispute Resolution Panel (DRP in short) u/s.144C(5) of the Act dated 29/12/2015 for the A.Y.2011-12.

2. Though the assessee had raised various grounds on merits of various additions / disallowances made by the Id AO and confirmed by the Id CIT(A), we find that the assessee had raised an additional ground vide petition dated 4.4.2019 stating that the assessment has been framed on a non-existing entity and accordingly is void abinitio.

3. We have heard the rival submissions and perused the materials available on record. The Id AR furnished the list of dates of events at the time of hearing for easy understanding of the case with relevant reference to the page numbers of the paper book. The Id DR also filed written submissions at the time of hearing on 30.9.2019 and later vide letter dated 25.10.2019 which was also duly served on the assessee. We find that the assessee had also filed a rebuttal to the said letters of the Id DR. Having considered all these submissions, we proceed to decide the legal issue as listed above.

3.1. We find that the undisputed facts available on record are as under:-

a) Atos IT Solutions and Services Private Ltd was originally incorporated on 27.3.2010 under the name "Siemens Information Systems (India) Pvt Ltd" which was subsequently changed to "Siemens IT Solutions and Services Pvt Ltd". This was incorporated as a wholly owned subsidiary of Siemens Pte. Ltd, Singapore. The assessee started its operation from 1.10.2010.

b) During the year under consideration, Siemens Pte. Ltd, Singapore transferred its shareholding in "Siemens IT Solutions and Services Pvt Ltd" to "Siemens IT Solutions & Services GMBH, Germany" and accordingly, the assessee became wholly owned subsidiary of "Siemens IT

Solutions & Services GMBH, Germany, whose ultimate holding company was Siemens AG. Before filing the return of income, the ultimate holding company was changed from Siemens AG to Atos SA, France. Consequently, the name of the company was changed to Atos IT Solutions and Services Pvt Ltd.

c) The assessee filed its return of income for the Asst Year 2011-12 on 30.11.2011 in the name of Atos IT Solutions and Services Pvt Ltd declaring total income of Rs 14,53,98,874/- which was subsequently revised to Rs 4,64,70,033/-. Subsequently, Atos IT Solutions and Services Private Ltd got merged into Atos India Private Ltd in view of scheme of amalgamation which was duly approved by the Hon'ble Bombay High Court dated 21.12.2012 enclosed in pages 1335 to 1350 of the Paper Book filed before us.

d) The assessee's case was picked up for scrutiny and notice u/s 143(2) of the Act was issued on 29.8.2013 by the ITO-7(2)(4) in the name of Atos IT Solutions and Services Private Ltd.

e) During the course of hearing, the assessee vide letter dated 31.1.2014 enclosed in page 1332 of the paper book, submitted the order of the Hon'ble Bombay High Court approving merger of Atos IT Solutions and Services Private Ltd into Atos India Private Ltd.

f) Accordingly, the jurisdiction was transferred from DCIT-7(2) to the jurisdiction of its successor company i.e. DCIT – 8(1), vide transfer memo dated 31.1.2014 enclosed in page 1334 of the paper book.

g) The assessee vide letter dated 3.2.2014 filed its consent with respect to such transfer of jurisdiction. Further, the assessee also filed the order of the Hon'ble Bombay High Court approving merger of Atos IT Solutions and Services Private Ltd into Atos India Private Ltd with the Id DCIT-8(1) as well. The evidences in this regard are enclosed in pages 1333 to 1350 of the paper book

h) Thereafter, due to internal restructuring in department, jurisdiction was transferred from DCIT -8(1) to Assistant/Deputy Commissioner of Income-tax - 14(1X1) ("ACIT/DCIT 14(1X1)") vide notice dated January 05, 2015. The evidence in this regard is enclosed in page No. 1354 of the paper book.

i) The assessee vide letter dated January 12, 2015, filed all the submissions which were filed before the previous assessing officers including the submission dated February 03, 2014 & January 31, 2014 wherein the order of the Hon'ble Bombay High Court approving merger was submitted.

j) Therefore, it can be seen from above that the assessee has submitted the copy of the Bombay High Court approving merger with all the Assessing Officers including the Assessing Officer who has passed the assessment order i.e. ACIT/DCIT-14(1)(1).

k) However, despite of mentioning the fact, the draft assessment order as well as the final assessment order was passed in the name of "**Atos IT**

**Solutions and Services Private Ltd"** which was not in existence at the time of passing the orders.

3.2. In these circumstances, the assessee has raised an additional ground challenging the validity of assessment framed in the hands of non-existent entity. This issue goes to the root of the matter and does not involve verification of any fresh facts in as much as the entire facts are already available on record and the same are not disputed. Accordingly, the additional ground raised by the assessee is hereby admitted and taken up for adjudication.

3.3. We find that the Id. DR vide letter dated 25/10/2019 submitted the written submissions of the Id. AO with regard to the additional ground by seeking report from the Id. AO. We find that the assessee had pleaded that the copy of fact of merger of Atos IT Solutions and Services Pvt. Ltd. with Atos India Pvt. Ltd., pursuant to the scheme of amalgamation duly approved by the Hon'ble Bombay High Court vide order dated 21/12/2012 was indeed submitted to the Id. AO during the course of assessment proceedings vide letters dated 31/01/2014 and 03/02/2014. The Bench directed the Id. DR to verify the availability of these letters from the assessment folder. Accordingly, the report dated 15/10/2019 was submitted by the Id. AO through the Id. CIT(DR) wherein the Id. AO had agreed to the fact that the letters dated 31/01/2014 and 03/02/2014

were indeed available in the case records of the assessee but the enclosures are not available thereon. We find that the entire objections of the Id. AO vide letter dated 15/10/2019 had already been addressed by us hereinabove. The very fact that the revenue was indeed aware of the fact of merger of Atos IT Solutions and Services Pvt. Ltd with Atos India Pvt. Ltd. is evident from the excruciating fact that on 31/01/2014 the jurisdiction of the assessee was transferred from DCIT 7(2) to DCIT 8(1) which is jurisdiction of Atos India Pvt. Ltd. being the successor company to the assessee. The evidence in this regard is enclosed in page 1334 of the paper book by way of transfer memo signed by DCIT 7(2), Mumbai. Hence, it cannot be said that the Id. AO was not intimated about the fact of merger with Atos India Pvt. Ltd., We also find that pursuant to this forwarding memo / transfer memo dated 31/01/2014 for transfer of jurisdiction from DCIT 7(2) Mumbai to DCIT 8(1) Mumbai, the assessee vide letter dated 03/02/2014 had filed its consent for transfer of jurisdiction. Even before the new Assessing Officer i.e. DCIT 8(1) Mumbai, assessee had once again filed a copy of the order of the Bombay High Court approving the amalgamation of Atos IT Solutions and Services Pvt. Ltd. with Atos India Pvt. Ltd. The evidences in this regard as stated supra are enclosed in pages 1333 to 1350 of the paper book. Later, by yet another letter dated 12/01/2015, the assessee had informed the subsequent Assessing Officer i.e. ACIT-14(1)(1), Mumbai (pursuant to

internal restructuring in the department wherein the jurisdiction of the case was transferred), wherein on the subject column itself the fact of merger of Atos IT Solutions and Services Pvt. Ltd. with Atos India Pvt. Ltd. vide High Court order dated 29/12/2012 was very clearly mentioned in bold letters. Evidences in this regard are enclosed in page 1351 to 1353 of the paper book. Despite all these facts, the following orders were passed by the lower authorities.

- a) Order u/s.92CA(3) of the Act by the Additional Commissioner of Income Tax, Transfer Pricing – 1(1), Mumbai dated 27/01/2015 in the name of Atos IT Solutions and Services Pvt. Ltd., (amalgamating company)
- b) Draft assessment order dated 31/03/2015 in the name of Atos IT Solutions and Services Pvt. Ltd. (amalgamating company)
- c) Directions issued by the Id. DRP u/s.144C(5) of the Act dated 29/12/2015 in the name of Atos IT solutions and Services Pvt. Ltd (now merged with Atos India Pvt. Ltd.)
- d) Final assessment order pursuant to the directions of Id. DRP was passed u/s.143(3) r.w.s. 144C(13) of the Act dated 27/01/2016 in the name of **Atos IT Solutions and Services Pvt. Ltd.**

3.4. From the aforesaid facts, it could be seen that even after the Id. DRP taking into account the fact of merger and passing order by giving directions to the Id. AO in the name of the merged entity i.e. Atos India

Pvt. Ltd, the Id. AO continued to frame the final assessment order in the name of erstwhile amalgamating company. Hence, it could be safely concluded that the Id. AO had passed draft assessment order as well as the final assessment order in the name of non-existent entity despite having due intimation of the fact of merger duly approved by the Hon'ble Bombay High Court vide order dated 21/12/2012. The law is now very well settled that assessment framed on a non-existent entity deserves to be declared as *void ab initio* by the recent decision of the Hon'ble Supreme Court in the case of PCIT vs. Maruthi Suzuki India Ltd., reported in 416 ITR 613 wherein it was held that where during pendency of assessment proceedings, assessee company was amalgamated with another company and thereby lost its existence, the assessment order passed subsequently in the name of said non-existent entity, would be without jurisdiction and was to be set aside. Respectfully following the same, we hold that the assessment order framed by the Id. AO in the instant case deserves to be quashed as the same is without jurisdiction, being framed on a non-existent entity. Accordingly, the additional ground raised by the assessee is allowed. Since, the entire assessment is quashed on a legal issue, the adjudication of various other grounds of merits becomes infructuous.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this 24/12/2019

**Sd/-**  
**(MAHAVIR SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 24/12/2019  
KARUNA, *sr.ps*

**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, Mumbai