

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER

ITA NO.1824/MUM/2015(A.Y.2010-11)

C.O. NO.67/MUM/2015

(Arising out of ITA NO.1667/MUM/2015(A.Y.2010-11))

Siemens Limited,  
(Successor in Interest to Siemens VIA Metals  
Technologies Private Limited)  
130, Pandurang Budhkar Marg,  
Worli, Mumbai – 400 018.  
PAN: AABCV 8348L

..... Appellant

Vs.

The ACIT 8(2)(1),  
Mumbai

..... Respondent

ITA NO.1667/MUM/2015(A.Y.2010-11)

The ACIT 8(2)(1),  
Mumbai

.... Appellant

Vs.

Siemens Limited,  
(Successor in Interest to Siemens VIA Metals  
Technologies Private Limited)  
130, Pandurang Budhkar Marg,  
Worli, Mumbai – 400 018.  
PAN: AABCV 8348L

Assessee by : S/Shri Nitesh Joshi & Christoper Rebello  
Revenue by : Shri Uodal Raj Singh

Date of hearing : 16/01/2020  
Date of pronouncement : 21/02/2020

ORDER

PER VIKAS AWASTHY, JM:

These cross appeals by the assessee and the Revenue are directed against the assessment order dated 20/01/2015 passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (in short 'the Act'). The assessee has also filed cross objections on the appeal of Revenue.

2. Shri Nitesh Joshi appearing on behalf of the assessee submitted at the outset that assessment in the case of the assessee is bad in law as the assessment has been made in the name of non-existing entity. Giving chronology of events, the Id. Authorized Representative for the assessee submitted that Siemens VAI Metal Technologies Pvt. Ltd. (in short 'SVAI') was merged with Siemens Limited by the order of Hon'ble Bombay High Court dated 17/08/2012 w.e.f. 01/10/2011. Immediately after receipt of the order approving the scheme of amalgamation by Hon'ble Bombay High Court, the assessee vide communication dated 18/10/2012 informed the Department regarding merger of the assessee with Siemens Limited. The assessee vide another communication dated 06/05/2013 informed the Assessing Officer about amalgamation of erstwhile SVAI with Siemens Limited. The assessee vide same communication requested for the transfer of jurisdiction of the case from Assessing Officer at Kolkata to Assessing Officer having jurisdiction over Siemens Limited at Mumbai. The Id. Authorized Representative for the

assessee further pointed that during the proceedings before TPO, the assessee vide communication dated 30/05/2013 and 23/07/2013 informed the fact of merger of SVAI with Siemens Limited with a specific information that w.e.f. 01/10/2011, SVAI has no legal existence. The Id. Authorized Representative for the assessee further referred to communication dated 05/07/2013 vide which the assessee had informed the CIT-I, Kolkata about merger of SVAI with Siemens Limited. The Id. Authorized Representative for the assessee pointed that despite several communications from the assessee informing the Department about the merger of SVAI with Siemens Limited, the Assessing Officer at Mumbai issued notice under section 142(1) r.w.s. 129 on 16/12/2013 in the name of non-existing entity i.e. SVAI. The Id. Authorized Representative for the assessee contended that it is a matter of record that jurisdiction of the Assessing Officer was transferred from Kolkata to Mumbai consequent to merger/amalgamation of SVAI with Siemens Limited.

2.1 The TPO passed the order under section 92CA(3) of the Act in the name of non-existing entity on 27/01/2014. Thereafter, the Assessing Officer passed the draft assessment order on 14/03/2014 in the name of SVAI i.e. the non-existent entity. The DRP, while disposing of the objections of the assessee vide direction dated 19/02/2014 in the title again mentioned the name of non-existent entity i.e. SVAI. However, the DRP mentioned in the title the name of the successor i.e. Siemens Limited. Thereafter, the final assessment order was passed in the name of non-existent entity i.e. SVAI. The Id. Authorized Representative of the assessee contended that it is a well settled law that assessment framed in the name of non-existent entity is void-ab-initio. In support of his contentions, the Id. Authorized Representative of the assessee

placed reliance on the decision of Hon'ble Supreme Court of India in the case of PCIT vs. Maruti Suzuki India Ltd. Reported as 416 ITR 613(SC) The Id.Authorized Representative of the assessee further submitted that the Tribunal in the case of group concern i.e. Siemens Limited vs. ACIT in ITA No.3296/Mum/2015 for assessment year 2003-04 decided on 01/03/2019 has quashed the assessment order on similar set of facts, where the assessment was framed in the name of amalgamating company which was non-existent on the date of passing of the assessment order. The Id.Authorized Representative of the assessee further pointed that the Tribunal in the case of another sister concern of the assessee i.e. M/s. Siemens Power Engineering Pvt. Ltd. vs. ACIT, ITA No.1772/Mum/2015 assessment year 2010-11 decided on 15/10/2019 taking a similar view quashed the assessment made in the name of non-existing entity.

3. The Id.Authorized Representative of the assessee submitted that admittedly the successor of SVAI – the present assessee participated in assessment proceedings and transfer pricing proceedings, however, this does not estop the assessee from raising legal objection challenging validity of assessment order framed in the name of a non-existent entity. In support of his arguments Id.Authorized Representative of the assessee again placed reliance on the decision rendered in the case of PCIT v. Maruti Suzuki India Ltd. (supra)

4. Per contra, Shri Uodal Raj Singh, representing the Department vehemently defended the validity of assessment order. The Id.Departmental Representative submitted that jurisdiction of the case was transferred from

Kolkatta to Mumbai. The authorities in Mumbai were never informed by the assessee regarding the fact of amalgamation and merger of SVAI with Siemens Limited.

5. We have heard the submissions made by rival sides on the legal issue of assessment made in the name of non-existent entity. It is an undisputed fact that SVAI was amalgamated with Siemens Limited in the Scheme of Amalgamation approved by Hon'ble Bombay High Court vide order dated 17/08/2012 w.e.f. 01/10/2011. Various communications by the assessee to the Department have been placed on record to show that assessee from time to time has been informing the Department regarding the fact of amalgamation of SVAI with Siemens Limited. One such communication dated 06/06/2013 is reproduced herein below:-

*“ May 05. 2013  
The Deputy Commissioner of income tax  
Circle 2,  
Aayakar Bhawan  
P-7 Chowringhee Square  
Kolkata 700 069*

*Ref: Siemens VAI Metals Technologies Private Limited ('the Company') (Now merged with Siemens Limited)*

*PAN: AABCV8348L*

*Sub.: Intimation regarding merger of the company with Siemens Limited and request to transfer present jurisdiction to the jurisdiction of Siemens Limited*

*Dear Madam,*

*With reference to the subject we would like to state that the company is assessable under your circle with Permanent Account Number of AABCV8348L*

*We had filed a letter on 19.10-2012 mentioning the company is amalgamated with M/s. Siemens Limited having registered office at 130, Pandurang Budhkar Marg, Worli, Mumbai -400013 by virtue of order dated 17.08.2012*

*of Hon'ble Bombay High Court in the matter of "Company Scheme Petition No. 234 of 2012 related to amalgamation of Siemens VAI Metals Technologies Private Limited with "Siemens Limited" and thus we ceased to exist as an independent legal entity from the sale date and are now part of Siemens Limited with appointed date as October 1, 2011. The copy of the said letter has been attached for your reference.*

*We request your goodself to kindly transfer our case from your jurisdiction to the jurisdiction of Siemens Limited PAN AAACSC764L under the jurisdiction of the Commissioner of Income-tax Range 7 Mumbai through the Additional Commissioner of Income-tax. Range 7(2), Mumbai through the Deputy Commissioner of Income-tax Range 7(2), Mumbai.*

*In view of the above, we request your good self tgo transfer all the pending matters relating to the company to above mentioned jurisdiction of Siemens Limited*

*Should your good self require any further information /documentation we shall be glad to submit the same.*

*Thanking you*

*Yours faithfully*

*Siemens Ltd.*

*(Successor in interest to Siemens VAI Metals Technologies Private Limited)*

*Sd/-*

*Authorized Signatory"*

A perusal of the above communication from the assessee to the Assessing Officer at Kolkata clearly indicates that the assessee had informed about the fact of amalgamation and also the fact that consequent to approval of scheme of amalgamation by Hon'ble Bombay High Court, SVAI has ceased to exist as an independent legal entity w.e.f. 01/10/2011. Further, the assessee had requested transfer of jurisdiction from Kolkotta to Mumbai upon amalgamation with Siemens Ltd. Thereafter, we find that the assessee even informed the TPO vide communication dated 30/05/2013 and 23/07/2013 regarding the fact of amalgamation. The assessee discharged its obligation of informing the Department about the fact of amalgamation and SVAI loosing its

independent existence. It is evident from the records that it is complete failure on the part of Department to have not taken cognisance of amalgamation of SVAI with Siemens Limited. It would be relevant to mention here that it is consequent to amalgamation of SVAI with Siemens Limited that the jurisdiction was changed from Kolkata to Mumbai. The reason of change in jurisdiction was amalgamation of SVAI with Siemens Limited. It is slackness on the part of TPO and Assessing Officer to pass the orders disregarding the vital fact.

6. The Hon'ble Apex Court in the case of PCIT vs. Maruti Suzuki India Ltd.(supra) has held that where during assessment proceedings, assessee company was amalgamated with another company and the assessment order was passed subsequently in the name of non-existing entity, such assessment order is without jurisdiction and is liable to be set-aside. The Hon'ble court further held that participation in assessment proceedings would not operate as an estoppel against law.

7. Thus, in the light of undisputed facts and the law settled by Hon'ble Apex Court in the case of PCIT vs. Maruti Suzuki India Ltd.(supra), we hold that the assessment order passed in the name of non-existing entity is void-ab-initio. Consequently, the assessee succeeds on legal ground No.7 of the appeal.

8. Since, we have allowed the appeal of assessee on legal issue, the other grounds raised in appeal of the assessee have become academic and hence, not deliberated upon.

9. As we have held the assessment order unsustainable in law, the appeal of the Revenue is liable to be dismissed, we hold accordingly. The cross objections of the assessee have become infructuous and are dismissed as such.

10. In the result, the appeal of assessee is allowed, the appeal of Revenue and cross objections of assessee are dismissed.

Order pronounced in the open court on Friday the 21<sup>st</sup> day of February, 2020.

Sd/  
(N.K.PRADHAN)  
ACCOUNTANT MEMBER

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, Dated 21/02/2020  
Vm, Sr. PS(O/S)

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**