

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

**BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT AND  
SHRI RAVISH SOOD, JUDICIAL MEMBER.**

**ITA No. 7319/MUM/2016**

**ITA No. 4909/MUM/2017**

**Assessment Years: 2010-11 & 2011-12**

Satyam Computer Services  
limited (Now merged with  
Tech Mahindra ltd.),  
Gateway Building, Apollo  
Bunder, Mumbai- 400 001

Vs. Deputy Commissioner Of Income-  
tax -2(3)(1),  
Aaykar Bhavan,  
Mumbai

**PAN No. AAACM3484F**

**Appellant**

**Respondent**

**&**

**ITA No. 7156/MUM/2016**

**ITA No. 4856/MUM/2017**

**Assessment Years: 2010-11 & 2011-12**

ACIT Circle-2(3)(1)  
R. No.552, 5<sup>th</sup> Floor,  
Aaykar Bhavan, M.K. Road  
Mumbai- 400 020

Vs. Satyam Computer Services limited  
(Now merged with Tech Mahindra  
ltd.), Gateway Building, Apollo  
Bunder, Mumbai- 400001

**PAN No. AAACM3484F**

**Appellant**

**Respondent**

Assessee by : Shri. J.D. Mistry, Senior Advocate  
Revenue by : Shri. A. Mohan, CIT D.R

Date of Hearing : 17.06.2020  
Date of pronouncement : 30.06.2020

## ORDER

**PER RAVISH SOOD, JM**

The captioned cross-appeals filed by the assessee and the revenue are directed against the respective orders passed by the CIT(Appeals)- 58, Mumbai, dated 29.08.2016 and CIT(Appeals)-55, Mumbai, dated 23.03.2017, for A.Y 2010-11 and A.Y 2011-12, respectively, which in turn arises from the respective assessment orders passed by the A.O u/s 143(3) r.w.s 153 r.w.s 144C(4) of the Act, dated 05.01.2015 AND u/s 143(3) r.w.s 144C(13) of the Act, dated 25.05.2015. As the issues involved in the captioned appeals are inextricably interlinked or in fact interwoven, therefore, the same are being disposed off by way of a common order. We shall first advert to the cross-appeals for A.Y 2010-11. The assessee has assailed the impugned order on the following grounds of appeal before us:

“Being aggrieved by the order under section 250 of the Income-tax Act, 1961 ('the Act') passed by the Commissioner of Income-tax (Appeals) - 58, Mumbai (hereinafter referred to as "the CIT(A)" ), the Appellant hereby submits the following grounds of appeal for your sympathetic consideration:

**1) Ground No. 1 —Adding reversal of unbilled revenue to the total income — Rs. 1,90,52,225/.**

1.1. On the facts and in the circumstances of the case and in law, the learned AO erred and the Hon'ble CIT(A) further erred in treating the reversal of unbilled revenue of Rs. 1,90,52,225/- as taxable income, through recognized as revenue in prior years.

**2) Disallowance of penalties paid in foreign countries — Rs. 32.60 Lakhs**

2.1 On the facts and in the circumstances of the case and in law, the learned AO erred and the Hon'ble CIT(A) further erred in upholding the action of the learned AO of disallowing an amount of Rs. 32.60 lakhs under Explanation 1 to Section 37(1) of the Act.

**3) Disallowance under Section 14A - 85,10,737/-**

3.1 On the facts and circumstances of the case and in law, the learned AO erred and the Hon'ble CIT(A) further erred in confirming the disallowance of Rs. 85,10,737/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ('the Rules').

**4) Disallowance of depreciation on Company cars — Rs. 7,76,47,184/-**

On the facts and in the circumstances of the case and in law, the learned AO erred and the Hon'ble CIT(A) further erred in confirming the disallowance of depreciation on cars purchased by the Appellant and provided to its employees for official purposes.

The Appellant craves leave to add, amend, delete, rectify, substitute and modify any of the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing the appeal.”

On the other hand, the revenue has assailed the impugned order before us by raising the following grounds of appeal :

“On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

1. On the facts and the circumstances of the case and in law, the Id. CIT(A) erred in deciding Rs.854 million is unearned income as part of operating income of the current year under consideration.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in justifying in his findings that how unearned income which was not supported by required documents can be treated as operating income.
3. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in rejecting revenue contention on treatment given to M/s Accentia Technologies Ltd being in business of software business whereas assessee himself has submitted that M/s Accentia Technologies Ltd. is in the business of software business.
4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing expenses of Rs.1,51,12,637/- allegedly as prior year expenses as expenses do not pertain to expenditure where earlier disallowance u/s. 43B of the IT Act. 1961 is made.
5. On the facts and in the circumstances of the case and in law. The Ld. CIT(A) erred allowing expenses incurred Rs.13,53,40,000/- in relation to computers as capital expenditure as assessee failed to reconcile the software and hardware expenditure with neither reimbursement from client nor milestones of the customer identifying the supply of hardware and software.
6. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing leasehold land registration 'expenses of Rs.8,80,000/- as revenue expenditure instead of capital expenditure.
7. On the facts and in the circumstances of the case and in law, the I d. CIT (A) erred in restricting u/s 14A disallowance to the extent of tax exempt income i.e. Rs.85,10,737/- without considering the fact that Notification 43/2016 dated 2.6.2016 will not apply for the this Assessment year.
8. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred allowing of Rs. Rs.51,50,00,000/- (gross debit balances' reflected in the balance Sheet) as unexplained cash credit without considering the fact that assessee failed to explain cash credit in his books of account.

9. For these and other grounds that may, Inc urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the AO restored.”

Further, the assessee vide its letter dated 18.11.2019 for A.Y 2010-11, had moved an application seeking admission of an additional ground of appeal, which reads as under:

“On facts and circumstances of the case and in law, the learned A.O has erred in passing the assessment order dated 5 January 2015 in the name of non-existent entity and would thus be non-est in the eyes of law.”

In the course of the hearing of the appeal, it was submitted by the Id. A.R that as the assessee by raising the aforesaid additional ground of appeal, has sought an adjudication of a legal issue the basis of the available on record, therefore, the same may be admitted. In support of his aforesaid contention the Id. A.R had relied on the judgments of the Hon’ble Supreme Court in the case of viz. (i). Jute Corporation of India Ltd. Vs. CIT & Anr. (1991) 187 ITR 688 (SC); (ii). New India Industries Ltd. Vs. CIT (1994) 207 ITR 1010 (Guj); and (iii). Controller of Estate Duty Vs. R. Brahadeeswaran (1987) 163 ITR 680 (Mad). Relying on the aforesaid judgments, it was submitted by the Id. A.R that in the absence of any statutory provision, the appellate authority is vested with all the plenary powers, which the subordinate authority may have in the matter. Also, support was drawn by the Id. A.R from the judgment of the Hon’ble Apex Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC). Relying on the said judgment, it was submitted by the Id. A.R that as held by the Hon’ble Apex Court, the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee, notwithstanding the fact that same was not raised before the lower authorities. In the backdrop of his aforesaid contentions, it was submitted by the Id. A.R that as the adjudication of the aforesaid legal issue was based on the facts available on record and no further investigation on facts was required, therefore, the same may be admitted. Apart from that, it was averred by the Id. A.R that the said additional ground of appeal was raised by the assessee in the backdrop of the recent order of the Tribunal in the assessee’s own case for A.Y 2011-12, ITA No. 7249/Mum/2017, wherein the order passed u/s 263 of the Act was quashed by the Tribunal by following the judgment of the Hon’ble Supreme Court in the case of Pr. CIT, New Delhi Vs. Maruti

Suzuki India Limited (Civil appeal No. 5409 of 2019, dated 25.07.2019). It was further submitted by the Id. A.R, that in case the additional ground of appeal was decided in favour of the assessee, then the other grounds of appeal would be rendered as merely academic in nature. Per contra, the Id. Departmental representative (for short "D.R") strongly objected to the admission of the additional ground of appeal as was sought by the assessee. It was submitted by the Id. D.R that as substantial delay was involved on the part of the assessee in seeking admission of the additional ground of appeal, therefore, the same did not merit to be admitted. Apart from that, it was averred by the Id. D.R that now when the assessee had participated in the assessment proceedings, henceforth validity of the same could not be challenged by it. Rebutting the said claim of the Id. D.R, Mr. J.D Mistry, Ld. Senior advocate for the assessee submitted, that the Hon'ble Apex Court in the case of PCIT Vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC), had observed, that now when the very basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity had ceased to exist upon the approved scheme of amalgamation, the participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. Accordingly, it was submitted by the Id. A.R that participation by the assessee in the assessment proceedings would not validate the assessment which was framed in the hands of a non-existent entity.

2. We have heard the authorized representatives for both the parties on the issue pertaining to the admission of the aforesaid additional ground of appeal. In our considered view, the assessee by raising the aforesaid additional ground of appeal has sought an adjudication of a legal issue on the basis of the facts already borne on record. In other words, the adjudication of the legal issue raised by the assessee would not require looking into any such fact which is not available on record. As submitted by the Id. A.R, the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC), had observed, that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and have a bearing on the tax liability of the assessee, notwithstanding the fact that same was not raised before the lower authorities. Also, as observed by us hereinabove, the Hon'ble Apex Court in the case of Jute Corporation of India Ltd. Vs. CIT & Anr. (1991) 187 ITR 688 (SC), had held, that

in the absence of any statutory provision, the appellate authority is vested with all the plenary powers, which the subordinate authority may have in the matter. As regards the objection of the revenue that now when the assessee had participated in the assessment proceedings, it could thereafter not be permitted to assail the validity of the assessment on a technical issue, and that too after a substantial lapse of time, we are afraid the same does not find favour with us. We find that the Hon'ble Apex Court in the case of PCIT Vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC), had observed, that now when the very basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity had ceased to exist upon the approved scheme of amalgamation, the participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. Accordingly, in the totality of the aforesaid facts, we find no reason as to why the additional ground of appeal raised by the assessee, therein seeking adjudication of a legal issue based on the facts borne from the records may not be admitted. We thus not being persuaded to accept the objection raised by the Id. D.R as regards admission of the aforesaid additional ground of appeal raised by the assessee, admit the same.

3. Briefly stated, M/s Satyam Computers Services Ltd. which was engaged in the business of Software development had e-filed its return of income for A.Y. 2010-11 on 15.10.2010, declaring its total income at Rs.nil under the normal provisions of the Act. The return of income filed by the aforementioned assessee viz. M/s Satyam Computers Services Ltd. was processed as such under Sec. 143(1) of the Act on 08.03.2011. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

4. As is discernible from the records the objects of the assessee company which was incorporated as Satyam Computer Services Pvt. Ltd. at Hyderabad on 24.06.1987, were to undertake design and development of system and application software either for its own use or for export. On 15.07.1991 the company changed its name to M/s Satyam Computers Services Ltd. AS on 07.01.2009 Shri B. Ramalinga Raju, the then chairman of Satyam Computers Services Ltd. addressed a confessional letter to the board of directors and brought certain serious infirmities to their notice viz. (i). inflated (non-existent) cash and bank balance of Rs. 5,040 Crores (as against

5,361 Crores reflected in the books of account; (ii). accrued interest of Rs. 376 Crores which was non-existent; (iii). understatement of liabilities of Rs. 1,230 Crores on account of funds arranged by him; and (iv). overstated debtors of Rs. 490 Crores (as against Rs. 2,651 Crores reflected in the books of accounts). In the backdrop of the aforesaid facts, the Government of India appointed a board to help the company to steer through the crisis. In April, 2009, Venturbay Consultant Pvt. Ltd. i.e a 100% subsidiary of Tech Mahindra merged as a successful bidder in acquisition of Satyam Computers Services Ltd. Subsequently, the assessee viz. Satyam Computers Services Ltd. w.e.f 01.04.2011 merged with M/s Tech Mahindra Ltd. After the said merger, all the proceedings against Satyam Computer Services Ltd. were taken over by Tech Mahindra Ltd.

5. As the assessee had during the year entered into international transactions with its related parties, therefore, a reference was made to the Transfer Pricing Officer (for short "TPO") u/s 92CA(1) of the Act. The TPO vide his order dated 29.01.2014 suggested adjustment of Rs. 24,01,91,345/- to the Arm's Length Price (for short "ALP") of the International transactions carried out by the assessee during the year, as under:

Sr. No.	Transaction	Adjustment proposed
1.	Receipt of Services	Rs. 1,84,00,000/-
2.	Provision of Software Development Services	Rs. 43,20,000/-
3.	Interest on loan given to AE viz. Citisoft Plc.	Rs. 18,31,345/-
4.	Interest on outstanding loan to AEs	Rs. 8,70,00,000/-
5	Interest on share application money pending allotment	Rs. 12,86,40,000/-
	Total	<b>Rs. 24,01,91,345/-</b>

Further, in the course of the assessment proceedings the case of the assessee was referred for special audit u/s 142(2A) of the Act. On 18.09.2014 the Special auditors submitted their report. The assessee was thereafter served a draft assessment order dated 14.11.2014 u/s 143(3) r.w.s 144C(1) r.w.s 153 of the Act. In reply, the assessee vide its letter dated 01.12.2014 intimated that it would prefer an appeal before the CIT(A). The A.O thereafter framed the assessment in the case of the assessee and after making certain additions/disallowances, vide his assessment order

passed u/s 143(3) r.w.s 153 r.w.s 144C(4), dated 05.01.2015 assessed its loss at (Rs. 250,86,52,830/-). On appeal, the additions/disallowances made by the A.O were partly vacated by the CIT(A), details as regards which are charted as under:

Sr. No.	Particular of addition /disallowance made by A.O	Amount	As per order of CIT(A)
1.	TP adjustment as regards receipt of Services from AEs.	Rs. 1,84,00,000/-	(i). Rejection of CPM as the MAM as per the TPSR was upheld by the CIT(A);
2.	TP adjustment as regards provision of Software Development Services to AEs	Rs. 43,20,000/-	<p>(ii). The exclusion of Rs. 854 million as the operating income of the assessee was set aside by the CIT(A);</p> <p>(iii) The exclusion of M/s Akshay Software Technologies Limited <u>AND</u> M/s Quintegra Solutions as comparables by the TPO was upheld by the CIT(A);</p> <p>(iv). As regards inclusion of M/s Accentia Technologies as a comparable, the TPO was directed by the CIT(A) to exclude the same;</p> <p>(v). The claim of the assessee for use of multiple year data was rejected by the CIT(A);</p> <p>(vi). The claim of the assessee for working capital adjustment was rejected by the CIT(A);</p> <p>(vii). The claim of the assessee for risk adjustment was also turned down by the CIT(A);</p> <p>(viii). Although the PLI/Tested Party/MAM selected by the assessee was found by the CIT(A) to be correct, however, the TPPO was directed that the arithmetic mean of</p>

			comparable margin was to be computed after effecting changes in list of comparables as directed.
3.	TP adjustment as regards the interest charged on the loan advanced by the assessee in foreign currency viz. GBP (Great Britain Pounds) to its AE viz. Citisoft PLC, U.K..	Rs. 18,31,345/-	Adjustment made by TPO using Indian PLR was vacated by CIT(A).
4.	TP adjustment of notional interest on outstanding loans to AEs	Rs. 8,70,00,000/-	The TPO was directed to charge notional interest on the amounts outstanding from the AEs only till the date of write off of the loans or till the initiation of liquidation proceedings, whichever was earlier
5.	Interest on share application money pending allotment	Rs. 12,86,40,000/-	<p>(i). As regards share application money paid by the assessee to two its AEs viz. (a). Satyam Computer Services, Egypt; and (b). Satyam Europe Limited, the CIT(A) observed that in respect of companies which went in for liquidation and were either under liquidation or had been liquidated before the financial year under reference, no interest could be levied on the capital financing done by the assessee.</p> <p>(ii). As regard share application money paid by the assessee to its AE viz. Satyam Computer Services, Belgium, the CIT(A) directed the TPO to treat the amount as loan for the period starting with receipt of amount by the AE and ending with the notification of the Authorities in Belgium granting approval for increase in share capital or the date of actual allotment of shares, whichever was earlier. Further, the TPO was directed to adopt for its aforesaid</p>

			working of interest the rate of 7% that was charged by the assessee from its other AEs.
6.	Addition of unbilled revenue recognized as revenue in the preceding year, to the extent the same was in excess of the prior period reversal.	Rs. 1,90,52,225/-	Addition was sustained by the CIT(A).
7.	Addition of short recorded interest on bank deposit.	Rs. 72,00,000/-	Addition was confirmed by the CIT(A) (as the assessee had claimed that it had offered the interest income for tax in A.Y 2011-12 i.e at the time of maturity of deposits, therefore, the CIT(A) had directed the A.O to verify the factual position and allow relief to the said extent in the year of maturity of deposits.
8.	Disallowance of prior period expenses	Rs. 1,51,12,637/-	Disallowance was deleted by the CIT(A).
9.	Disallowance of amounts paid by the assessee as penalties to (i). Municipal Corporation of Vishakapatnam; (ii). Assistant Registrar of Customs Southern range; and (iii). Foreign authorities.	Rs. 34,00,000/-	Disallowance was confirmed by the CIT(A).
10.	Disallowance of excess depreciation on fixed assets capitalized prior to 01.04.2009.	Rs. 1,12,10,000/-	Disallowance was deleted by the CIT(A).
11.	Interest inadmissible u/s 23 of MSMED.	Rs. 6,23,038/-	Assessee claiming the same as an inadvertent mistake had not carried the same by way of an appeal before the CIT(A).
12.	Disallowance of expenses incurred by the assessee on purchase of software and	Rs. 1,10,66,257/-	Disallowance confirmed by the CIT(A).

	hardware items wholly and exclusively for the purpose of use/sale as consumables/tools in trade in the ordinary course of its business of providing software services to its customers.		
13.	Disallowance of expenses incurred by the assessee on computers and claimed to have been used in the course of execution of software development projects for its customers, for which it was reimbursed as per the sale agreements.	Rs. 13,53,40,000/-	Disallowance was deleted by the CIT(A).
14.	Disallowance of leasehold registration expenses.	Rs. 8,80,000/-	Disallowance was deleted by the CIT(A).
15.	Disallowance made by the A.O u/s 14A r.w Rule 8D	Rs. 6,90,80,000/-	Disallowance was restricted by the CIT(A) to the extent of the amount of exempt income of Rs. 85,10,737/-.
16.	Addition by the A.O of the gross debit balances reflected in the 'balance sheet'.	Rs. 51,50,00,000/-	The addition was deleted by the CIT(A)
17.	Disallowance of depreciation on cars given by the assessee to its employees.	Rs. 7,76,47,184/-	Disallowance was confirmed by the CIT(A).
18.	Not granting of TDS credit (as per 'Form 26AS')	Rs. 31,16,25,228/-	The CIT(A) directed the A.O to examine the TDS certificates and allow credit for the TDS payments to the assessee.

6. Both the assessee and the revenue being aggrieved with the order of the CIT(A) has carried the matter by way of cross-appeals before us. However, as the assessee by raising an additional ground of appeal has assailed the validity of the assessment order passed by the A.O

u/s 143(3) r.w.s 153 r.w.s 144C(4), dated 05.01.2015, therefore, we shall first deal with the same. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that M/s Satyam Computers Services Ltd. had merged with M/s Tech Mahindra Ltd. w.e.f 01.04.2011. It was submitted by the Id. A.R, that though the fact that M/s Satyam Computers Services Ltd. had merged with the assessee company was in the notice of the A.O, however, he had framed the assessment under Sec. 143(3) r.w.s 153 r.w.s 144C(4), dated 05.01.2015 in the name of "M/s Satyam Computers Services Ltd." Accordingly, it was submitted by the Id. A.R that the assessment framed in the name of the amalgamating company viz. M/s Satyam Computers services Ltd. which had ceased to exist in the eyes of law was invalid and untenable in law. It was averred by the Id. A.R that the A.O despite being well informed of the fact that M/s Satyam Computers Services Ltd. which had w.e.f 01.04.2011 merged with the assessee company, had thus ceased to exist, however, had chosen to frame the assessment in the hands of the said non-existent entity. In order to drive home his aforesaid claim the Id. A.R drew our attention to Page 2 – Para 4 of the assessment order, wherein the A.O had categorically observed that Satyam Computers Services Limited had w.e.f 01.04.2011 merged with M/s Tech Mahindra Ltd. Further, the Ld. A.R in order to buttress his contention that an assessment on a non-existent entity was invalid in the eyes of law, therein relied on the judgment of the Hon'ble Supreme Court in the case of PCIT Vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC) (copy placed on record). It was thus submitted by the Id. A.R, that the assessment order passed by the A.O under Sec. 143(3) r.w.s 153 r.w.s 144C(4), dated 05.01.2015 in the hands of a non-existent entity was non-est in the eyes of law, and thus was liable to be quashed on the said ground itself. The Id. A.R in order to substantiate his claim that an assessment framed in the hands of a non-existent company is non-est in law relied on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. M/s Spice Entertainment Ltd. (Civil Appeal No. 285 of 2014, dated 02.11.2017). On the basis of his aforesaid contention, it was the claim of the Id. A.R that as the assessment order was in the name of the amalgamating company viz. M/s Satyam Computers Services Ltd, which was non-existent on the date when the said order was passed, therefore, the same was null and void ab initio. It was further submitted by the Id. A.R, that in the backdrop of identical facts the order passed by the Pr.CIT u/s 263 of the Act, dated 24.10.2017 in the assessee's own case for the immediately succeeding year i.e

A.Y 2011-12 in Tech Mahindra Ltd. Vs. Pr. CIT-2, Mumbai, ITA No. 7249/Mum/2017 had been quashed by the Tribunal, vide its order dated 11/10/2019. It was submitted by the Id. A.R, that the Tribunal in its aforesaid order, had concluded, that as the assessment order passed by the A.O under Sec. 143(3) r.w.s 144C(3), dated 25.05.2015 was in the name of M/s Satyam Computers Services Ltd., i.e an entity that was non-existent on the date on which the assessment order was passed, therefore, the same was non-est in the eyes of law. Also, the Tribunal taking cognizance of the fact that the order passed by the Pr. CIT under Sec. 263 of the Act, dated 24.10.2017, was in the name of the non-existent entity viz. M/s Satyam Computers Services Ltd., had quashed the same. The Id. A.R took us through the observations recorded by the Tribunal in the aforesaid order passed in the assessee's own case for A.Y 2011-12, ITA No. 7249/Mum/2017. In the backdrop of his aforesaid contentions, it was submitted by the Id. A.R that the assessment order passed by the A.O under Sec. 143(3) r.w.s 153 r.w.s 144C(4), dated 05.01.2015 in the hands of a non-existent entity being non-est in the eyes of law, was thus liable to be quashed.

7. Per contra, the Id. D.R relied on the orders of the lower authorities. It was once again reiterated by the Id. D.R, that now when the assessee had participated in the assessment proceedings, therefore, it was not permissible on its part to now assail the validity of the assessment order.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. In order to appreciate the nature of the controversy involved in the present appeal, the narration of the facts would be instructive. M/s Satyam Computers Services Ltd. was initially incorporated as Satyam Computers Pvt. Ltd. at Hyderabad on 24.06.1987. Objects of the company were to undertake design and development system and application software either for its own use or for export. On 15.07.1991 the company changed its name to M/s Satyam Computers Services Ltd. Subsequently, on 26.08.1991, the company went public and 81.22% shareholding was offered to the public. M/s Satyam Computers Services Ltd. was subsequently merged with the assessee company i.e M/s Tech Mahindra Ltd. i.e w.e.f 01.04.2011. Subsequent to the aforesaid merger, the existing proceedings against Satyam Computers Services Ltd. were taken over by the

assessee company. On a perusal of the assessment order, we find that the A.O at Page 2 – Para 4 ,had observed, that Satyam Computers Services Ltd. had w.e.f 01.04.2011 merged with M/s Tech Mahindra Ltd. The observations of the A.O to the said effect are reproduced as under:

- “4. The assessee, Satyam Computres Services Ltd. (SCSL) has subsequently been merged with M/s Tech Mahindra Ltd. which is being assessed in this charge. The merger has taken place with effect from 01.04.2011. Subsequent to this merger all the existing proceedings against SCSL had been taken by Tech Mahindra. Accordingly, the case was transferred to this office of DCIT-2(3), Mumbai.”

Accordingly, it can safely be concluded that though the A.O while framing the assessment was well informed about the fact that M/s Satyam Computers Services Limited w.e.f 01.04.2011 having merged with M/s Tech Mahindra Ltd. was thus no more in existence, however, he had vide his assessment order passed under Sec. 143(3) r.w.s 153 r.w.s 144C(4), dated 05.01.2015 chosen to frame the assessment in the hands of the said non-existent entity. As a matter of fact, we find that even the PAN Number stated in the assessment order i.e “AACCS 8639Q” is of the aforesaid amalgamating company i.e M/s Satyam Computers Services Ltd. In sum and substance, a perusal of the orders of the lower authorities reveals beyond any scope of doubt that the assessment order under Sec.143(3) r.w.s 153 r.w.s 144C(4), dated 05.01.2015 was passed in the name of a non-existent entity viz. M/s Satyam Computers Services Ltd.

9. We find that the issue involved in the present appeal lies in a narrow compass i.e. as to whether or not the assessment order passed in the name of a non-existent company would be sustainable in the eyes of law. We find that the issue hereinabove involved is no more res integra pursuant to the judgement of the **Hon’ble Supreme Court** in the case of **Pr. CIT Vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC)**. We shall briefly cull out the facts which were involved in the case before the Hon’ble Apex Court. The assessee was a joint Venture between Suzuki Motor Corporation and Maruti Suzuki India Ltd. Initially, the assessee upon incorporation was known as Suzuki Motor India Ltd. Subsequently, w.e.f 08.02.2015, its name was changed to Suzuki Powertrain India Ltd. On 28.11.2012, the assessee had filed its return of income in the name of Suzuki Powertrain India Ltd. (no amalgamation having been taken place on the relevant date). On 29<sup>th</sup> January, 2013 a scheme for amalgamation of Suzuki Powertrain India Ltd. and

Maruti Suzuki India Ltd. was approved by the High court w.e.f 01.04.2012. As per the terms of the approved scheme the liabilities and duties of the transferor company were to stand transferred to the transferee company without any further act or deed. On 2<sup>nd</sup> April, 2013, Maruti Suzuki India Ltd. intimated the A.O about the amalgamation. The case was selected for scrutiny and a notice under Sec. 143(2) of the Act was issued on 26.09.2013, followed by a notice under Sec. 142(1) to the amalgamating company. On 22<sup>nd</sup> January, 2016, the Transfer Pricing Officer passed an order under Sec. 92CA(3) of the Act. On 11<sup>th</sup> March, 2016, a draft assessment order was passed in the name of Suzuki Powertrain (amalgamated with Maruti Suzuki India Ltd.). It is a matter of fact that the assessee viz. Maruti Suzuki India Ltd. had participated in the assessment proceedings of the erstwhile amalgamating entity i.e Suzuki Powertrain India Ltd. through its authorized representatives and officers. On 14<sup>th</sup> October, 2016, the DRP issued its order in the name of Maruti Suzuki India Ltd. (as successor in interest of erstwhile Suzuki Powertrain India Ltd. since amalgamated). The final assessment order was passed on 31<sup>st</sup> October, 2016 in the name of Suzuki Powertrain India Ltd. (amalgamated with Maruti Suzuki India Ltd.). On appeal, the Tribunal 'set aside' the final assessment order on the ground that it was void ab initio having been passed in the name of the non-existent entity by the A.O. The decision of the Tribunal was affirmed by the Hon'ble High Court of Delhi. On further appeal, the Hon'ble Supreme Court dismissed the appeal of the revenue by observing that though the A.O was aware of the fact that the amalgamating company had ceased to exist as a result of the approved scheme of amalgamation, however, the notice was issued in its name. It was observed by the Hon'ble Court that the basis on which the jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Also, it was observed by the Hon'ble Apex Court that participation in the proceedings by the assessee would not operate as an estoppel against law. While observing as hereinabove, the Hon'ble Court had relied on its earlier order in the case of **CIT Vs. M/s Spice Entertainment Ltd. (Civil Appeal No. 285 of 2014), dated 02.11.2017**, wherein the order of the Hon'ble High Court of Delhi in Spice Infotainment Ltd. Vs. CIT (2012) 247 CTR 500 (Del) was affirmed and the SLP filed by the revenue was dismissed. In fact, we find that the **Hon'ble Supreme Court** in the case of **CIT Vs. M/s Spice Entertainment Ltd. (Civil appeal No. 285 of 2014)**, had upheld the order of the Hon'ble High Court of Delhi,

which while allowing the appeal of the assessee, had concluded, that where the A.O had framed the assessment in the hands of a non-existent entity, the proceedings and the assessment order so passed would be clearly void and could not be classed as a procedural irregularity of a nature which could be cured by invoking the provisions of Sec. 292B of the Act. The Hon'ble High Court of Delhi while concluding as hereinabove had relied on the judgment of the **Hon'ble Supreme Court** in the case of **Saraswati Industrial Syndicate Ltd. Vs. CIT, 186 ITR 278**, wherein it was observed, that it was trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. The Hon'ble Supreme Court while concluding as hereinabove had observed as under:

"The question is whether on the amalgamation of the India Sugar Company with the appellant Company, the Indian Sugar Company continued to have its entity and was alive for the purposes of Section 41(1) of the Act. The amalgamation of the two companies was effected under the order of the High Court in proceedings under Section 391 read with Section 394 of the Companies Act. The Saraswati Industrial Syndicate. the transferee Company was a subsidiary of the Indian Sugar Company, namely, the transferor Company. Under the scheme of amalgamation the Indian Sugar Company stood dissolved on 29th October, 1962 and it ceased to be in existence thereafter. Though the scheme provided that the transferee Company the Saraswati Industrial Syndicate Ltd. undertook to meet any liability of the Indian Sugar Company which that Company incurred or it could incur, any liability, before the dissolution or not thereafter.

Generally, where only one Company is involved in change and the rights of the share holders 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 share holders of each blending Company become substantially the share holders 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."

On the basis of our aforesaid deliberations, it can safely be concluded that the assessment order passed by the A.O under Sec. 143(3) r.w.s 153 r.w.s 144C(4), dated 05.01.2015 in the hands of M/s Satyam Computers Services Ltd., i.e an entity that was non-existent on the date on which the

assessment order was passed would thus be non-est in the eyes of law. In fact, as observed by us hereinabove, involving identical fact situation in the assessee's own case for the immediately succeeding year i.e A.Y 2011-12, we had quashed the order passed by the Pr. CIT under Sec. 263, dated 24.10.2017 on two counts viz. (i) that, the order of revision u/s 263 was passed by the Pr. CIT in the name of M/s Satyam Computers Services Ltd., i.e a company which was non-existent on the date of passing of the order; and (ii) that, the Pr. CIT in exercise of his power under Sec. 263 was divested on his jurisdiction of revising an assessment order which in itself was non-est in the eyes of law. Accordingly, as per the settled position of law laid down by the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd. (supra) and M/s Spice Entertainment Ltd. (supra), we are of the considered view that as the assessment order passed in the hands of a non-existent entity viz. M/s Satyam Computer Services Ltd., has no sanctity of law, therefore, the same cannot be sustained and is hereby quashed.

10. As we have quashed the assessment order for want of jurisdiction, therefore, we refrain from adverting to the merits of the case which having been rendered as academic in nature are thus left open. The additional ground of appeal raised by the assessee is allowed.

11. Resultantly, the appeal of the assessee in ITA No. 7319/Mum/2016 is allowed, while for the appeal of the revenue in ITA No. 7156/Mum/2016 is dismissed.

**ITA No.4909/Mum/2017**

**ITA No. 4856/Mum/2017**

**A.Y.-2011-12**

12. We shall now take up the cross-appeals of the assessee and the revenue for A.Y 2011-12. The assessee has assailed the impugned order on the following grounds of appeal before us:

“Being aggrieved by the order under section 250 of the Income-tax Act, 1961 ('the Act') passed by the Commissioner of Income-tax (Appeals) - 55, Mumbai (hereinafter referred to as "the CIT(A)"), the Appellant hereby submits the following grounds of appeal for consideration:

1) **Ground No. 1 — Transfer Pricing Adjustment of Rs. 4,78,48,414**

**i. Treating incomes amounting to Rs. 226.7 Crores as non-operating income**

On the facts and circumstances of the case and in law, Hon'ble CIT (A) erred in upholding the action of the learned TPO / AO by considering operating incomes as non-operating and excluding the same from the margin computation of the Appellant.

**ii. Rejection of external uncontrolled comparable selected by the Appellant**

On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding /confirming the action of learned TPO/AO of arbitrarily disregarding the comparable companies selected by the Appellant, which were selected after carrying out systematic and methodological search process , without providing any cogent reasons for the same or pointing out any material deficiencies therein

**2) Ground No. 2 — Adjustment in interest on Loans advanced to AEs- Rs. 10,14,579**

On the facts and the circumstances of the case and in law, the learned CIT (A) erred in upholding the action of TPO/AO and erroneously rejecting LIBOR interest rates charged by the appellant and applying risk adjustment factor on Loans advanced to AEs.

**3) Ground No. 3 - Interest on balance outstanding from AE- Rs.1,00,000/-**

On the facts and the circumstances of the case and in law, the CIT (A) erred in upholding the action of TPO/AO with respect to the upward adjustment in interest by applying the domestic interest rate on trade balance outstanding from the AE.

**4) Ground No. 4 - Interest on outstanding balance of share application money – Rs. 3,99,64,384/-**

On the facts and the circumstances of the case and in law, the CIT (A) erred in upholding adjustment of notional interest on payment of share application money pending allotment to AEs.

**5) Ground No. 5 - Disallowance of depreciation on Company cars - Rs. 5,93,72,171/-**

On the facts and in the circumstances of the case the CIT (A) erred in upholding the view of the AO and in confirming the disallowance of depreciation on cars purchased by the Appellant and provided to its employees by treating the same as personal expenses when the vehicles were provided to employees for carrying out duties in relation to business c

The Appellant craves leave to add, amend, delete, rectify, substitute and modify any of the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing the appeal.

The Appellant craves leave to submit such facts/ documents/ evidences in the course of hearing as may be necessary.”

On the other hand, the revenue has challenged the order of the CIT(A) on the following grounds of appeal before us :

- “1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in excluding TPO's selection of cases where high margins were there, citing higher margin as reason wherein higher margin should not be ground alone to rule out comparables and when nothing is established to prove comparables are functionally different or exceptional reasons for high margin normal entity of same industry cannot generate.
2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deciding that no interest be charged in loan given to AEs which are in liquidation, when in principle has accepted interest to be charged on loans and advances given to other AE's .
3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing expenses incurred Rs. 1,36,35,486/- in relation to computers as revenue expenditure though in earlier assessment years, CIT(A) has ruled that, such expenditure are capital in nature.”
13. Briefly stated, the assessee had e-filed its return of income for A.Y. 2011-12 on 30.11.2011, declaring its total income at Rs.nil under the normal provisions of the Act. The return of income filed by the aforementioned assessee was processed as such under Sec. 143(1) of the Act on 08.03.2011. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.
14. As the assessee had during the year entered into international transactions with its related parties, therefore, a reference was made to the Transfer Pricing Officer (for short “TPO”) u/s 92CA(1) of the Act. The TPO vide his order dated 30.01.2015 suggested adjustment of Rs. 30,57,37,251/- to the Arm's Length Price (for short “ALP”) of the International transactions carried out by the assessee during the year, as under:

Sr. No.	Transaction	Adjustment proposed
1.	Receipt of Services	Rs. 5,41,26,947/-
2.	Provision of Software Development Services	Rs. 1,73,71,368/-
3.	Interest on loan given to AE viz. Citisoft Plc.	Rs. 29,80,736/-
4.	Interest on outstanding loans to AEs	Rs. 10,26,18,200/-
5	Interest on share application money pending allotment	Rs. 12,86,40,000/-
	Total	<b>Rs. 30,57,37,251/-</b>

The assessee was thereafter served a draft assessment order dated 27.03.2015 u/s 143(3) r.w.s 144C(1) of the Act. In reply, the assessee vide its letter dated 10.04.2015 intimated that it would prefer an appeal before the CIT(A), and requested that a final assessment order be passed u/s 143(3) r.w.s 144C(3) of the Act. The A.O thereafter framed the assessment in the case of the assessee and after making certain additions/disallowances, vide his assessment order passed u/s 143(3) r.w.s 144C(3), dated 25.05.2015 assessed its loss at (Rs. 501,24,21,909/-). On appeal, the additions/disallowances made by the A.O were partly vacated by the CIT(A), details as regards which is charted as under:

Sr. No.	Particular of addition /disallowance made by A.O	Amount	As per order of CIT(A)
1.	TP adjustment as regards receipt of Services from AEs.	Rs. 5,41,26,947/-	(i). Rejection of RPM/CPM as the MAM as per the TPSR was upheld by the CIT(A). It was observed by the CIT(A), that comparing the segmental financial results and operations of the company vis-à-vis the comparables on OP/OC basis was fully justified under TNMM method adopted by the TPO;
2.	TP adjustment as regards provision of Software Development Services to AEs	Rs. 1,73,71,369/-	(ii). On comparables, it was observed by the CIT(A) that the assessee had submitted a list of 16 comparables. Out of the said 16 comparables, the TPO had rejected 7 comparables. Finally, the TPO had adopted 13 comparables i.e 9 comparables (selected by the assessee) & 4 comparables (selected by the TPO). The CIT(A) was of the view that as the 4 comparables included by the TPO in the final list of comparables, had a high margins ranging from 28.55% to 56.44%, therefore, it would be reasonable if the final list of comparables was restricted to 9 comparables (selected by the assessee) for the purpose of

			working out the OP/OC ratios under the TNM method.
3.	TP adjustment as regards the interest charged on the outstanding loan of GBP 500,000, and additional loan of GBP 250,000 that was advanced by the assessee from its internal accruals to its AE in U.K @7% p.a..	Rs. 29,80,736/-	Adjustment made by TPO using Indian PLR was though vacated by CIT(A), but considering the risks involved, and also the exchange and delay in repayment, the CIT(A) directed that interest on the loan be charged @10% p.a. .
4.	TP adjustment of notional interest on outstanding loans to AEs	Rs. 10,26,18,200/-	It was observed by the CIT(A) that as four AE's of the assessee viz. (i)/ Satyam Computer Services, Egypt; (ii). Satyam Computer Services, Belgium; (iii). Satyam Europe Limited; and (iv). Vision Express were in liquidation, there was no reason and purpose of charging any interest on the outstanding debts cum loans since these companies had gone into liquidation. AS regards one of the AE viz. Satyam Computer Services, Shanghai, it was observed by the CIT(A) that interest should have been charged @10% [7% (+) 3%] on the outstanding debt cum loan.
5.	Interest on share application money pending allotment	Rs. 12,86,40,000/-	(i). As regards share application money paid by the assessee to two its AEs viz. (a). Satyam Computer Services, Egypt; and (b). Satyam Europe Limited, the CIT(A) following the view taken by his predecessor in A.Y 2010-11, therein observed that in respect of companies which went in for liquidation and were either under liquidation or had been liquidated before the financial year under reference, no interest could be levied on the capital financing done

			<p>by the assessee.</p> <p>(ii). As regard share application money paid by the assessee to its AE viz. Satyam Computer Services, Belgium, the CIT(A) directed the TPO to treat the amount as loan for the period starting with receipt of amount by the AE and ending with the notification of the Authorities in Belgium granting approval for increase in share capital or the date of actual allotment of shares, whichever was earlier. The CIT(A) directed the TPO to charge interest @10%[7% (+) 3%] on the share application money of 1006 millions for the period 01.04.2010 to 23.08.2010 (i.e upto the date of allotment of shares).</p>
6.	Disallowance of expenses incurred by the assessee on purchase of hardware by characterizing of the same as a 'capital expenditure' by the A.O, despite the claim of the assessee that the said hardware items were billed to the customers in their bills.	Rs. 13,53,40,000/-	The CIT(A) observing that the claim for deduction of hardware items was prima facie allowable, directed the A.O to verify that the same formed part of the billed invoices raised by the assessee on its customers.
7.	Disallowance of depreciation on cars given by the assessee to its employees.	Rs. 5,93,72,171/-	Disallowance was confirmed by the CIT(A).
8.	Not granting of TDS credit (as per 'Form 26AS')	Rs. 41,08,88,050/-	The CIT(A) directed the A.O to examine he TDS certificates and allow credit for the TDS payments to the assessee.

15. Both the assessee and the revenue being aggrieved with the order of the CIT(A) have carried the matter by way of cross-appeals before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that a coordinate

bench of the Tribunal viz. ITAT “E” Bench, Mumbai, while disposing off the appeal of the assessee against the order passed by the Pr. CIT u/s 263 of the Act, dated 24.10.2017, had vide its order dated 11.10.2019 held that the assessment order passed by the A.O u/s 143(3) r.w.s 144C(3), dated 25.05.2015 in the hands of M/s Satyam Computers Services Ltd., i.e an entity that was non-existent on the date on which the assessment order was passed, would thus be non-est in the eyes of law. In order to fortify his aforesaid contention, the Id. A.R took us through the observations recorded by the Tribunal while disposing off the aforesaid appeal of the assessee for the year under consideration. In the backdrop of the aforesaid facts, it was submitted by the Id. A.R that the assessment order having been held as non-est by the Tribunal while disposing off the assessee’s appeal against the order passed by the Pr. CIT u/ 263 of the Act, thus did no more survive.

16. Per contra, the Id. D.R relied on the orders of the lower authorities.

17. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements/orders relied upon by them. Admittedly, the Tribunal viz. ITAT “E” Bench, Mumbai, while disposing off the assessee’s appeal against the order passed by the Pr. CIT u/s 263 of the Act, dated 24.10.2017, had vide its order passed in ITA No. 7249/Mum/2017, dated 11.10.2019 for the year under consideration i.e A.Y 2011-12, had held, that as the assessment order was passed by the A.O u/s 143(3) r.w.s 144C(3), dated 25.05.2015 in the hands of M/s Satyam Computers Services Ltd., i.e an entity that was non-existent on the date on which the assessment order was passed, the same would thus be non-est in the eyes of law. The relevant observations of the Tribunal are reproduced as under:

“7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, and also the judicial pronouncements relied upon by them in support of their respective contentions. In order to appreciate the nature of the controversy involved in the present appeal, the narration of the facts would be instructive. M/s Satyam Computers Services Ltd. was initially incorporated as Satyam Computers Pvt. Ltd. at Hyderabad on 24.06.1987. Objects of the company were to undertake design and development system and application software either for its own use or for export. On 15.07.1991 the company changed its name to M/s Satyam Computers Services Ltd. Subsequently, on 26.08.1991, the company went public and 81.22% shareholding was offered to the public. M/s Satyam Computers Services Ltd. was subsequently merged with the assessee company i.e M/s Tech Mahindra Ltd.

w.e.f 01.04.2011. Subsequent to the aforesaid merger, the existing proceedings against Satyam Computers Services Ltd. were taken over by the assessee company.

8. Admittedly, as is discernible from the assessment order the fact that M/s Satyam Computers Services Ltd. had been merged with M/s Tech Mahindra Ltd. 01.04.2011 was clearly to the knowledge of the assessing officer. In fact, a specific mention of the fact that M/s Satyam Computers Services Ltd. had merged with the assessee company on 01.04.2011 and all the existing proceedings against it were taken over by the assessee company finds a specific mention in the assessment order passed by the A.O under Sec. 143(3) r.w.s 144C(3), dated 25.05.2015. However, we find that despite being conversant of the fact that M/s Satyam Computers Services Ltd. having been merged with the assessee company i.e M/s Tech Mahindra Ltd. w.e.f 01.04.2011, was thus no more existing, the A.O had framed the assessment in the name of the said non-existent entity viz. M/s Satyam Computers Services Ltd., vide his order passed under Sec. 143(3) r.w.s 144C(3), dated 25.05.2015. As a matter of fact, we find that even the PAN Number stated in the assessment order i.e “AACCS 8639Q” is of the aforesaid amalgamating company i.e M/s Satyam Computers Services Ltd. As is discernible from the records, the Pr. CIT-2, Mumbai, also had thereafter passed the order under Sec. 263 of the Act, dated 24.10.2017 in the name of the non-existent entity viz. “M/s Satyam Computers Services Ltd. (now merged with Tech Mahindra Ltd.)”. At this stage, it would be relevant to point out that even in the aforesaid order passed by the Pr. CIT under Sec. 263 of the Act, the PAN Number of M/s Satyam Computers Services Ltd. i.e AACCS8639Q was mentioned. In sum and substance, a perusal of the orders of the lower authorities reveals beyond any scope of doubt that the respective orders under Sec.143(3) r.w.s 144C(3), dated 25.05.2015 and under Sec. 263 of the Act, dated 24.10.2017, were passed in the name of a non-existent entity viz. M/s Satyam Computers Services Ltd.

9. We shall now deliberate on the validity of the impugned order passed by the Pr. CIT-2, Mumbai, under Section 263 of the Act, dated 24.10.2017. The issue involved in the present appeal lies in a narrow compass i.e. as to whether the order passed in the name of a non-existent company would be sustainable in the eyes of law, or not. We find that the issue hereinabove involved is no more res integra pursuant to the judgement of the **Hon'ble Supreme Court** in the case of **Pr. CIT, new Delhi Vs Maruti Suzuki India Ltd. (Civil appeal No. 5409 of 2019, dated 25.07.2019)**. We shall briefly cull out the facts which were involved in the aforesaid case before the Hon'ble Apex Court. The assessee was a joint Venture between Suzuki Motor Corporation and Maruti Suzuki India Ltd. Initially, the assessee upon incorporation was known as Suzuki Motor India Ltd. Subsequently, w.e.f 08.02.2015, its name was changed to Suzuki Powertrain India Ltd. On 28.11.2012, the assessee had filed its return of income in the name of Suzuki Powertrain India Ltd. (no amalgamation having been taken place on the relevant date). On 29<sup>th</sup> January, 2013 a scheme for amalgamation of Suzuki Powertrain India Ltd. and Maruti Suzuki India Ltd. was approved by the High court w.e.f 01.04.2012. As per the terms of the approved scheme the liabilities and duties of the transferor company were to stand transferred to the transferee company without any further act or deed. On 2<sup>nd</sup> April, 2013, Maruti Suzuki India Ltd. intimated the A.O about the amalgamation. The case was selected for scrutiny and a notice under Sec.143(2) of the Act was issued on 26.09.2013, followed by a notice under Sec.142(1) to the amalgamating company. On 22<sup>nd</sup> January, 2016, the Transfer Pricing Officer passed an order under Sec. 92CA(3) of the Act. On 11<sup>th</sup> March, 2016, a draft assessment order was passed in the name of Suzuki Powertrain (amalgamated with Maruti Suzuki India Ltd.). It is a matter of fact that the assessee viz. Maruti

Suzuki India Ltd. had participated in the assessment proceedings of the erstwhile amalgamating entity i.e Suzuki Powertrain India Ltd., through its authorized representatives and officers. On 14<sup>th</sup> October, 2016, the DRP issued its order in the name of Maruti Suzuki India Ltd. (as successor in interest of erstwhile Suzuki Powertrain India Ltd. since amalgamated). The final assessment order was passed on 31<sup>st</sup> October, 2016 in the name of Suzuki Powertrain India Ltd. (amalgamated with Maruti Suzuki India Ltd.). On appeal, the Tribunal set aside the final assessment order on the ground that it was void ab initio having been passed in the name of the non-existent entity by the A.O. The decision of the Tribunal was affirmed by the Hon'ble High Court of Delhi. On further appeal by the revenue, the Hon'ble Supreme Court dismissed the appeal by observing that though the A.O was aware of the fact that the amalgamating company had ceased to exist as a result of the approved scheme of amalgamation, however, the notice was issued in its name. It was observed by the Hon'ble Court that the basis on which the jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Also, it was observed by the Hon'ble Apex Court that participation in the proceedings by the assessee would not operate as an estoppel against law. While observing as hereinabove, the Hon'ble Court had relied on its earlier order in the case of **CIT Vs. M/s Spice Entertainment Ltd. (Civil Appeal No. 285 of 2014), dated 02.11.2017**, wherein the order of the Hon'ble High Court of Delhi was affirmed and the SLP filed by the revenue was dismissed. In fact, we find that the **Hon'ble Supreme Court** in the case of **CIT Vs. M/s Spice Entertainment Ltd. (Civil appeal No. 285 of 2014)**, had upheld the order of the Hon'ble High Court of Delhi, which while allowing the appeal of the assessee, had concluded, that where the A.O had framed the assessment in the hands of a non-existent entity, the proceedings and the assessment order so passed would be clearly void and could not be classed as a procedural irregularity of a nature which could be cured by invoking the provisions of Sec. 292B of the Act. The Hon'ble High Court of Delhi while concluding as hereinabove had relied on the judgment of the **Hon'ble Supreme Court** in the case of **Saraswati Industrial Syndicate Ltd. Vs. CIT, 186 ITR 278**, wherein it was observed, that it was trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. The Hon'ble Supreme Court while concluding as hereinabove had observed as under:

“The question is whether on the amalgamation of the India Sugar Company with the appellant Company, the Indian Sugar Company continued to have its entity and was alive for the purposes of Section 41(1) of the Act. The amalgamation of the two companies was effected under the order of the High Court in proceedings under Section 391 read with Section 394 of the Companies Act. The Saraswati Industrial Syndicate. the transferee Company was a subsidiary of the Indian Sugar Company, namely, the transferor Company. Under the scheme of amalgamation the Indian Sugar Company stood dissolved on 29th October, 1962 and it ceased to be in existence thereafter. Though the scheme provided that the transferee Company the Saraswati Industrial Syndicate Ltd. undertook to meet any liability of the Indian Sugar Company which that Company incurred or it could incur, any liability, before the dissolution or not thereafter.

Generally, where only one Company is involved in change and the rights of the share holders 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 share holders of each blending Company

become substantially the share holders 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."

On the basis of our aforesaid deliberations, it can safely be concluded that the assessment order passed by the A.O under Sec. 143(3) r.w.s 144C(3), dated 25.05.2015 in the hands of M/s Satyam Computers Services Ltd., i.e an entity that was on the date on which the assessment order was passed was non-existent, would thus be non-est in the eyes of law. Now, in the backdrop of the aforesaid facts, we shall deliberate on the sustainability of the order passed by the Pr. CIT under Sec. 263 of the Act, dated 24.10.2017, which as observed by us hereinabove is found to be in the name of "Satyam Computes Services Ltd. (now merged with Tech Mahindra Ltd.)" with a specific mention of the PAN Number of the said amalgamating company. To sum up, even the order passed by the Pr.CIT-2, Mumbai, under Sec. 263 is found to be in the name of a non-existent viz. M/s Satyam Computers Services Ltd., which as observed by us hereinabove, had merged with the assessee company way back w.e.f 01.04.2011. Accordingly, on the basis of our aforesaid deliberations that an order passed in the hands of a non-existent entity has no sanctity of law, and thus is nothing better than nullity, therefore, as per the settled position of law as had been so laid down by the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd. (supra) and M/s Spice Entofainment Ltd. (supra), we are of the considered view that the order passed by the Pr. CIT-2, Mumbai, cannot be sustained and is liable to be vacated on the said count itself. Apart there from, we are also persuaded to subscribe to the claim of the Id. A.R that in case the assessment in itself having been framed in the hands of a non-existent entity is found to be non-est in the eyes of law, the same thereafter cannot be revised by the CIT under Sec. 263 of the Act. In fact, we are of a strong conviction that an assessment order which in itself is found to be non-est in the eyes of law cannot be revised by the CIT, for the reason, that the same would imply extending/granting fresh limitation to the A.O for passing of a fresh assessment order. Our aforesaid view is fortified by the order of a coordinate bench of the Tribunal i.e **ITAT, Mumbai "G" Bench** in the case of **West Life Development Ltd. Vs.PCIT-5, Mumbai (2017) 88 taxman.com 439 (Mum)**. Accordingly, in the backdrop of our aforesaid observations, we are of the considered view that now when the assessment order passed by the A.O under Sec. 143(3) r.w.s 144C(3), dated 25.05.2015 is in itself found to be non-est in the eyes of law, therefore, the Pr. CIT-2, Mumbai could not have revised the same in exercise of the powers vested with him under Sec.263 of the Act. As such, on the basis of our aforesaid deliberations, we are of the considered view that the order passed by the Pr. CIT under Sec. 263, dated 24.10.2017 cannot be sustained on two counts viz. (i) that, the order of revision u/s 263 has been passed by the Pr. CIT in the name of M/s Satyam Computers Services, i.e a company which was non-existent on the date of passing of the order; and (ii) that, the Pr. CIT in exercise of his power under Sec. 263 was divested on his jurisdiction of revising an assessment order which in itself was non-est in the eyes of law. We thus on the basis of our aforesaid observations quash the order passed by the Pr. CIT under Sec.263 of the Act, dated 24.10.2017,

on the ground of invalid assumption of jurisdiction on his part. As we have quashed the order passed by the Pr. CIT-2, Mumbai, under Sec.263 of the Act, for want of jurisdiction, therefore, we refrain from advertng to the merits of the issues therein involved, which thus are left open.”

In our considered view, as the assessment order passed by the A.O u/s 143(3) r.w.s 144C(3), dated 25.05.2015 for the year under consideration i.e A.Y 2011-12 in the hands of M/s Satyam Computers Services Ltd., i.e an entity that was non-existent on the date on which the assessment order was passed, had been held by the Tribunal in its aforesaid order as non-est in the eyes of law, therefore, the same does not survive and on the same terms is quashed.

18. As we have quashed the assessment order for want of jurisdiction, therefore, we refrain from advertng to the merits of the case which having been rendered as academic in nature are thus left open.

19. Accordingly, the appeal of the assessee in ITA No. 4856/Mum/2017 is allowed, while for the appeal of the revenue in ITA No. 4909/Mum/2017 is dismissed.

20. Resultantly, the appeals of the assessee viz. ITA No. 7319/Mum/2016 for A.Y 2010-11 and ITA No. 4909/Mum/2017 for A.Y 2011-12 are allowed, while for the appeals of the revenue viz. ITA No. 7156/Mum/2016 for A.Y 2010-11 and ITA No. 4856/Mum/2017 for A.Y 2011-12 are dismissed, in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-  
(Pramod Kumar)  
VICE PRESIDENT

मुंबई Mumbai; दिनांक 30.06.2020

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai