

**IN THE INCOME TAX APPELLATE TRIBUNAL
"J" Bench, Mumbai**

**Before Shri M. Balaganesh, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.2181/Mum/2017
(Assessment Year: 2012-13)**

Siemens Limited
(Successor in Interest to Siemens Power
Engineering Private Limited)
130, Pandurang Budhkar
Marg, Worli,
Mumbai 400 018

Deputy Commissioner of
Income Tax- 8(2)(1),
Aayakar Bhavan,
Vs. Room No. 624, 6th Floor,
M.K. Road, Mumbai 400 020

PAN – AACCS0764L

(Appellant)

(Respondent)

Appellant by: Shri Nitesh Joshi, A.R

Respondent by: Shri Uodhal Raj Singh, D.R

Date of Hearing: 28.07.2020

Date of Pronouncement: 20.08.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the A.O u/s 143(3) r.w.s 144C(13) of the Income-tax Act, 1961 (for short 'Act'), dated 30.01.2017. The assessee has assailed the impugned order on the following grounds of appeal before us:

1. On the facts and in the circumstances of the case and in law, the learned Transfer Pricing Officer ('the learned TPO') and the learned Assessing Officer ('the learned AO') erred and the Hon'ble Dispute Resolution Panel ('DPP') further erred in upholding / confirming an addition of Rs. 8,14,89,376/- to the Appellant's total income.
2. On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the learned TPO in rejecting all the seven functionally comparable companies selected by the

Appellant without pointing out any deficiency in the detailed benchmarking analysis conducted by the Appellant in its transfer pricing report ('TP report').

3. On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the learned TPO in cherry picking additional companies without considering the detailed submission filed by the Assessee in support of rejection of the alleged comparable companies.
4. On the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in rejecting the Appellant's contention to exclude Kitco Ltd. and TCE Consultation Engineers Ltd. from the set of alleged comparable companies selected by the learned TPO.
5. On the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in rejecting the Appellant's contention to grant the working capital adjustment / other comparability adjustments to the Appellant in terms of the Rule 10B(3) of the Income-tax Rules, 1962 ('the Rules').
6. On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the learned TPO in rejecting the without prejudice contention of the Appellant to treat foreign exchange gain loss earned by the Appellant as non-operating in nature, since the learned TPO himself has considered foreign exchange gain / loss as non-operating item in the Appellant's own case for AY.2010-11 and AY 2011-12.
7. On the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in rejecting the without prejudice contention of the Appellant that its profitability for the 6 months period ended 30 September 2011 has been severely impacted vis-à-vis full financial year, i.e. 1 April 2011 to 31 March 2012 and hence, no adjustment should be made to the international transactions entered into by the Appellant.
8. On the facts and in the circumstances of the case and in law, the learned AO erred in passing the impugned order under the Permanent Account Number of Siemens Power Engineering Private Limited which has ceased to exist on the date of the impugned order on account of its merger with Siemens Limited with effect from 1 October 2011, thereby the entire assessment proceedings be regarded to be void ab initio as the same has been passed in the case of nonexistent entity.
9. On the facts and in the circumstances of the case and in law, the learned AO / TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the learned AO / TPO in not stating any reasons to show that either of the conditions mentioned in clauses (a) to (d) of Section 92C(3) of the Act were satisfied before making an adjustment to the total income of the Appellant.
10. On the facts and in the circumstances of the case and in law, the learned AO / TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the learned AO / TPO in rejecting the without prejudice contention of the Appellant to compute the margin of alleged comparable companies based on multiple year financial data, without appreciating the facts of the case and without providing cogent reasons.
11. On the facts and in the circumstances of the case and in law, the learned AO erred in initiating penalty proceedings under section 271(1)(c) of the Act. The Appellant prays that the penalty proceedings may please be dropped.
12. The Appellant submits that the above grounds are independent and without prejudice to one another.
13. The Appellant craves leave to add, alter, amend or withdraw all or any of the grounds of appeal herein above and to submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal as per the law."

Apart from that, the assessee has raised an additional ground of appeal before us, which reads as under:

"On the facts and in the circumstances of the case, and in law, without prejudice to the earlier grounds, the learned Assessing Officer (AO) has erred by assuming jurisdiction and issuing notice u/s 143(2) of the Income tax Act, 1961 (the Act) to a non-existent company, i.e Siemens Power Engineering Private Limited ('SPEL'), even after the AO was informed that SPEL has been amalgamated as a result of approved scheme of amalgamation with Siemens Limited with effect from 1st October 2011 and ceased to exist as on the date of issuance of notice u/s 143(2) of the Act, thereby rendering the entire assessment proceedings void ab initio against the non-existent entity."

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 on the basis of the material available on record, therefore, the same may be admitted. It was further 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 have 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. 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 revenue, it was submitted by the Id. A.R, that the Hon'ble Apex Court in the case of PCIT Vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC), had observed, that 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 de hors issuance of a notice u/s 143(2) to the amalgamated company.

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. Apart from that, we find that 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 backdrop 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, the assessee company which is engaged in the business of providing engineering, design and drawing services using customized CAD tools which help the AEs in planning, designing and setting-up power plants worldwide had e-filed its return of income for A.Y 2012-13 on 29.11.2012, declaring its total income at Rs. 38,16,17,310/-. Subsequently, the assessee revised its return of income on 31.03.2014 at an income of Rs.

14,86,39,770/- . The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny assessment and a notice u/s 143(2), dated 07.08.2013 was issued and duly served on the assessee.

4. During the course of the assessment proceedings the A.O referred the matter u/s 92CA(1) to the Transfer Pricing Officer (for short "TPO") for determining the Arm's Length Price (for short 'ALP') of the International transactions of the assessee. The TPO vide his order passed u/s 92CA(3), dated 08.01.2016 proposed an adjustment of Rs 11,88,37,454/- as regards the international transactions entered into by the assessee with its AEs. After receiving the order passed by the TPO u/s 92CA(3), dated 08.01.2016, the A.O passed a draft assessment order u/s 144C(1) r.w.s 143(3), dated 28.03.2016, proposing to assess the income of the assessee at Rs. 26,74,77,219/-. The assessee objected to the draft assessment order before the Disputes Resolution Panel-2, Mumbai (for short 'DRP'). However, the DRP after deliberating on the objections raised by the assessee was not inclined to accept the same, and vide its order passed u/s 144C(5), dated 29.11.2016, except for taking cognizance of the claim of the assessee as regards an arithmetical error in the computation of the adjustments carried out by the TPO, found no infirmity in the additions/disallowances proposed by the A.O in his draft assessment order. The A.O after receiving the order passed by the DRP u/s 144C(5), dated 29.11.2016, therein framed the assessment u/s 143(3) r.w.s 144C(13), dated 30.01.2017 and assessed the income of the assessee company at Rs. 23,01,29,140/-.

5. Aggrieved, the assessee has assailed the assessment framed by the A.O u/s 143(3) r.w.s 144C(13), dated 30.01.2017 in appeal before us. As the assessee by raising the additional ground of appeal has assailed the validity of the jurisdiction assumed by the A.O, we shall thus first deal with the same. The Id. Authorised representative (for short 'A.R') for the assessee submitted that the A.O vide a letter dated 04.05.2013 was intimated of the fact that the assessee viz. M/s Siemens Power Engineering Pvt. Ltd, PAN No. AACCS5323F pursuant to the orders of the High Court of Punjab & Haryana dated 23.11.2012, and that of the High Court of Bombay dated 02.11.2012, issued under Sec. 391 to Sec. 394 of the Companies Act, 1956, was amalgamated with M/s Siemens Limited, PAN No. AAACS0764L, Registered office: 130, Pandurang Budhkar Marg, Worli, Mumbai, with appointed date as 01.10.2011. In order to support his aforesaid contention the Id. A.R took us through a letter dated 14.05.2013 that was addressed by the assessee to the A.O. Further, the Id. A.R took us through a letter dated 14.05.2013, wherein the aforesaid fact as regards amalgamation of the assessee company was also brought to the notice of the Commissioner of Income-tax, Gurgaon, with a request that the case of the assessee may be transferred to the Commissioner of Income-tax, Range 7, Mumbai, who was vested with the requisite jurisdiction in the case of the amalgamated company i.e M/s Siemens Limited. In sum and substance, it was submitted by the Id. A.R that though the fact as regards amalgamation of the assessee company with M/s Siemens Limited was well within the knowledge of both the A.O and the CIT, however, the notice u/s 143(2), dated 07.08.2013 was issued by the A.O in the name of M/s Siemens Power Engineering Pvt. Ltd, PAN No. AACCS5323F, which having amalgamated with M/s

Siemens Limited, PAN No. AAACS0764L, was non-existent on the date of issuance of the aforesaid notice. On a specific query raised by the bench as to whether any other notice u/s 143(2), dated 07.08.2013 was issued to the assessee, the Id. A.R answered in the negative. In order to buttress his claim that the notice u/s 143(2), dated 07.08.2013 was the solitary notice issued to the assessee, the Id. A.R took us through the assessment order. In the backdrop of the aforesaid facts, it was submitted by the Id. A.R that in absence of any notice u/s 143(2) having been issued by the A.O to the amalgamated company viz. M/s Siemens Limited, PAN No. AAACS0764L, the assessment framed u/s 143(3) r.w.s 144C(13), dated 30.01.2017 was null and void. To sum up, it was the claim of the Id. A.R that de hors issuance of a valid notice u/s 143(2) to the amalgamated company viz. M/s Siemens Limited, PAN No. AAACS0764L, the assessment framed in the latter's hand could not be sustained and was liable to be struck down. In support of its aforesaid contention the Id. A.R had relied on the judgment of the Hon'ble Supreme Court in the case of Pr. CIT Vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC). Taking us through the said judicial pronouncement, it was submitted by the Id. A.R that in the said case also the A.O despite having been intimated on 02.04.2013 about the amalgamation of the assessee company, had thereafter issued the notice u/s 143(2), dated 26.09.2013 in the name of the amalgamating company, which thereafter was followed by a notice u/s 142(1) of the Act. It was submitted by the Id. A.R, that the Hon'ble Apex Court taking cognizance of the aforesaid facts, had inter alia observed, that the issuance of notice u/s 143(2) by the A.O to a non-existent company was a substantive illegality and not a procedural irregularity. It was further averred by the Id. A.R, that

as the jurisdiction that was invoked by the A.O was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation, therefore, the participation in the proceedings by the assessee under such circumstances cannot operate as an estoppel against law. Further, the Id. A.R relied on the order passed by the Tribunal in the assessee's own case for A.Y 2010-11 in ITA No. 1772/Mum/2015m, dated 15.10.2019 (copy placed on record). On the basis of his aforesaid contentions, it was submitted by the Id. A.R that as the A.O had assumed jurisdiction *san* issuance of a valid notice u/s 143(2) to the amalgamated company, the assessment therein framed could not be sustained and was thus liable to be vacated.

6. Per contra, the Id. Departmental representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R that as both the draft assessment order, as well as the final assessment order was passed in the name of the amalgamated company viz. M/s Siemens Limited, therefore, no infirmity did therein emerge. Further, it was submitted by the Id. D.R that the assessee had neither intimated about the amalgamation of the assessee company, nor raised the aforesaid issue before the first appellate authority.

7. 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. As per the records, we find that the assessee viz. M/s Siemens Power Engineering Pvt. Ltd, PAN No. AACCS5323F, had pursuant to the orders issued under Sec. 391 to Sec. 394 of the Companies Act, 1956 by the High Court of Punjab & Haryana dated

23.11.2012, and that of the High Court of Bombay dated 02.11.2012, was amalgamated with M/s Siemens Limited, PAN No. AAACS0764L, Registered office: 130, Pandurang Budhkar Marg, Worli, Mumbai with appointed date as 01.10.2011. Admittedly, it is a matter of fact that the assessee had vide letters dated 04.05.2013 and 14.05.2013 had informed the A.O i.e DCIT, Circle-2, Gurgaon, that pursuant to the orders of the High Court of Punjab & Haryana dated 23.11.2012, and that of the High Court of Bombay dated 02.11.2012, issued under Sec. 391 to Sec. 394 of the Companies Act, 1956, it was with effect from 01.10.2011 amalgamated with M/s Siemens Limited, PAN No. AAACS0764L, Registered office: 130, Pandurang Budhkar Marg, Worli, Mumbai. Also, it is a fact borne from the record that the assessee vide its letter dated 14.05.2013 addressed to the Commissioner of Income-tax, Gurgaon, had brought the aforesaid fact of its amalgamation with M/s Siemens Limited, PAN No. AAACS0764L to his notice, alongwith a request that its case may be transferred to the Commissioner of Income-tax-Range-7, Mumbai, who exercised the requisite jurisdiction over the case of the amalgamated company i.e M/s Siemens Limited. Despite having been informed about the fact that the assessee company pursuant to the orders of the High Court of Punjab & Haryana dated 23.11.2012, and that of the High Court of Bombay dated 02.11.2012, issued under Sec. 391 to Sec. 394 of the Companies Act, 1956 had amalgamated with M/s Siemens Limited, PAN No. AAACS0764L, effectively from 01.10.2011, the A.O had issued the Notice u/s 143(2), dated 07.08.2013 in the name of the amalgamating company viz. M/s Siemens Power Engineering Pvt. Ltd, PAN No. AACCS5323F. Although, the claim of the Id. A.R that the Notice u/s 143(2), dated 07.08.2013 was the solitary notice

issued to the assessee is found to be incorrect, as we find that another notice u/s 143(2), dated 09.09.2014 was issued, but then, the latter notice is also found to have been issued in the name of the amalgamating company viz. M/s Siemens Power Engineering Pvt. Ltd, PAN No. AACCS5323F. In sum and substance, it is a matter of fact borne from the records that no Notice u/s 143(2) was ever issued by the A.O to the amalgamated company viz. M/s Siemens Limited.

8. Although, it is a matter of fact borne from the records that both the draft assessment order u/s 143(3) r.w.s 144C(1), dated 28.03.2015, and the final assessment order u/s 143(3) r.w.s 144C(13), dated 30.01.2017 have been passed in the name of "M/s Siemens Ltd. (successor in interest to Siemens Power Engineering Pvt. Ltd.)", but then, the PAN No. in both the respective orders is that of the amalgamating company viz. M/s Siemens Power Engineering Pvt. Ltd. Be that as it may, our indulgence in the present appeal has been sought by the assessee, to adjudicate, the validity of the assessment order passed u/s 143(3) r.w.s 144C(13) de hors issuance of any notice u/s 143(2) to the amalgamated company. Viewed from another angle, we have been called upon to adjudicate the validity of the assessment framed without issuance of any notice u/s 143(2) to the amalgamated company. As observed by the **Hon'ble Supreme Court** in the case of **ACIT & Anr. Vs. Hotel Blue Moon (2010) 321 ITR 362 (SC)**, the omission on the part of the assessing authority to issue notice under Sec. 143(2) cannot be held to be a procedural irregularity, and the same is not curable. As such, the Hon'ble Apex Court had observed that for the purpose of framing of a valid assessment issuance of a notice under s. 143(2) cannot be dispensed with. In the case of **CIT Vs.**

Laxman Das Khandelwal (2019) 310 CTR 8 (SC), it was observed by the Hon'ble Supreme Court that though the scope of Sec. 292BB is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee, but then, the same does not save complete absence of notice. It was concluded by the Hon'ble Apex Court that Sec. 292BB only seeks to cure the infirmities in the manner of service of notice, and is not intended to cure complete absence of notice itself.

9. In the backdrop of the aforesaid settled position of law, we shall now look into the repercussions of non-issuance of a notice u/s 143(2) by the A.O to the amalgamated company on the validity of the assessment therein framed. It is not the case before us that the A.O had issued a notice u/s 143(2) in the name of assessee i.e the amalgamated company, the validity of which is assailed by the assessee on the ground of an improper service of the same. Admittedly, as observed by us hereinabove, no notice u/s 143(2) was ever issued by the A.O in the name of the amalgamated company, viz. M/s Siemens Limited, PAN No. AAACS0764L. As per the records, the revenue cannot be allowed to canvas that the fact that the assessee company pursuant to the orders of the High Court of Punjab & Haryana dated 23.11.2012, and that of the High Court of Bombay dated 02.11.2012, issued under Sec. 391 to Sec. 394 of the Companies Act, 1956 had amalgamated with M/s Siemens Limited, PAN No. AAACS0764L, effectively from 01.10.2011, was not brought to its notice by the assessee. As observed by us hereinabove, the assessee had vide vide its letters dated 04.05.2013 and 14.05.2013 had informed the A.O i.e DCIT, Circle-2, Gurgaon, about its amalgamation with M/s Siemens Limited, PAN No. AAACS0764L. Also, as noticed by us hereinabove, the assessee

had vide its letter dated 14.05.2013 addressed to the Commissioner of Income-tax, Gurgaon, had brought the aforesaid fact of its amalgamation with M/s Siemens Limited, PAN No. AAACS0764L to his notice, with a request that its case may be transferred to the Commissioner of Income-tax, Range-7, Mumbai, who exercised the requisite jurisdiction over the case of the amalgamated company i.e M/s Siemens Limited. We find that the **Hon'ble Supreme Court** in the case of **Saraswati Industrial Syndicate Ltd. Vs. CIT, 186 ITR 278**, had observed, that it is 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 appellat 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 trans free 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."**

(Emphasis supplied by us)

In fact, we find that the **Hon'ble Supreme Court** in the case of **CIT Vs. M/s Spice Infotainment Ltd. (Civil appeal No. 285 of 2014)**, by relying on its aforesaid order in the case of Saraswati Industrial Syndicate Ltd (supra), 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. Further, the Hon'ble Supreme Court in the case of **Pr. CIT Vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC)**, had observed, that where the A.O despite being informed of the fact that the amalgamating company had ceased to exist as a result of the approved scheme of amalgamation, had issued the notice u/s 143(2) in the name of the amalgamating company, the very basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceased to exist upon the approved scheme of amalgamation. Further, it was observed by the Hon'ble Apex Court, that participation in the proceedings by the assessee cannot operate as an estoppel against law. On the basis of our aforesaid observations, we are of the considered view that neither the issuance of the notice u/s 143(2) to the amalgamating company i.e a non-existent entity be construed as a notice issued to the amalgamated company, nor the same be validated by bringing it within the realm of a procedural irregularity within the meaning of Sec. 292B of the Act. We are of a strong conviction that non-issuance of a notice u/s 143(2) to the amalgamated company, which forms the very foundation for

framing of a valid assessment would divest the A.O of his very jurisdiction to frame such assessment. In fact, we would mince no words in concluding that the non-issuance of a notice u/s 143(2) to the amalgamated company viz. M/s Siemens Limited, PAN No. AAACS0764L, would therein render the impugned assessment framed by the A.O u/s 143(3) r.w.s 144C(13), dated 30.01.2017 as invalid and void ab initio. Accordingly, the impugned assessment framed by the A.O de hors issuance of any notice u/s 143(2) to the amalgamated company cannot be sustained, and is thus quashed for want of jurisdiction. **The additional ground of appeal raised by the assessee is allowed.**

10. As we have quashed the assessment for want of jurisdiction on the part of the A.O, therefore, we refrain from adverting to the other grounds of appeal raised by the assessee before us i.e Grounds of appeal No. 1 to 13, which thus are left open.

11. Resultantly, the appeal of the assessee in ITA No. 2181/Mum/2017 is allowed in terms of our aforesaid observations.

Sd/-
(M.Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 20.08.2020

P.S Rohit

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,

Sd/-

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **ITATMumbai**