

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

**BEFORE SHRI SAKTIJIT DEY (JM) AND  
SHRI N.K. PRADHAN (AM)  
ITA No. 761/MUM/2013  
Assessment Year: 2008-09  
&  
ITA No. 2080/MUM/2014  
Assessment Year: 2009-10**

BASF India Limited (BASF Coatings India Pvt. Ltd., (now amalgamated with BASF India Ltd.), Vibgyor Towers, Unit No. 101, 1 <sup>st</sup> Floor, G Block, C-62, Bandra Kurla Complex, Bandra (E), Mumbai - 400051 PAN : AABCB2364G	<b>Vs.</b>	The Dy. Comm. of Income Tax-6(1), 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Marg, Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**&  
ITA No. 2080/MUM/2014  
Assessment Year: 2009-10**

M/s BASF India Ltd. (into which BASF Polyureth India Ltd. is amalgamated), Vibgyor Towers, Unit No. 101, 1 <sup>st</sup> Floor, G Block, C-62, Bandra Kurla Complex, Bandra (E), Mumbai - 400051 PAN : AACCB5918E	<b>Vs.</b>	The Dy. CIT - 6(1), Aayakar Bhavan, M.K. Karve Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Ms. Heena Doshi (AR)  
Revenue by : Shri Akhtar H. Ansari (DR)

Date of Hearing: 09/10/2020  
Date of Pronouncement: 22/10/2020

**ORDER**

**PER SAKTIJIT DEY, JM**

Captioned appeals by the assessee arise out of two assessment orders passed u/s 143 (3) r.w.s. 144C (13) of the Act. In pursuance to the directions of learned Dispute Resolution Panel (DRP), for the assessment years 2008-09 and 2009-10.

2. Though, the assessee has raised multiple grounds contesting the additions made in the assessment orders. However, for the first time before the Tribunal, the assessee has raised an additional ground challenging the validity of the assessment orders. In the additional ground, the assessee has challenged the validity/legality of the assessment orders passed in the name of non-existing entities.

3. The learned Counsel for the assessee drawing our attention to the impugned assessment orders submitted, the Assessing Officer having passed the assessment orders in the name of entities which are no longer in existence, having merged with the present appellant, the assessment orders are void-ab-initio.

4. The learned Departmental Representative, though, has not disputed the factual position that the entities in whose name the assessment orders have been passed having already merged with the present appellant are no longer in existence, however, he submitted that the assessment orders passed are valid. The learned Departmental Representative submitted, though, the Hon'ble High Court passed orders on 14<sup>th</sup> January, 2011 approving amalgamation of the companies with BASF India Ltd., however, the assessee has not taken consequential steps, such as, surrendering the old PAN No. and applying new PAN no., not filed revised return of income with new PAN, no information was submitted whether ROC was intimated the fact of amalgamation and revised financial statements were filed. Further, the learned Departmental Representative, drawing our attention to the assessment orders, submitted that the Assessing Officer has mentioned the name of the erstwhile companies followed by the name of the company with which they were merged. Therefore, no prejudice has been caused to the assessee. Explaining further,

he submitted, the reason for mentioning the name and PAN No. of the amalgamated company in the assessment orders is because reference to the Transfer Pricing Officer was made before the amalgamation. Finally, he submitted, the appeals filed by the assessee are not maintainable as in the challans for paying the appeal fee the assessee has mentioned the name of the erstwhile company.

5. In rejoinder, the learned Counsel for the assessee submitted, the very fact that the assessment orders have been passed in the name of non-existing entities make them invalid. Further, she submitted, mentioning the name of amalgamating company afterwards in the assessment orders would not validate them. She submitted, under identical facts and circumstances, the Hon'ble Supreme Court in case of Pr. CIT vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC) has held the assessment orders passed in the name of amalgamated company to be invalid.

6. We have considered rival submissions and perused the material on record. The issue raised in the additional ground being a purely legal and jurisdictional issue going to the root of the matter and considering the fact that the issue can be decided on the basis of facts and material available on record and does not require investigation into fresh facts, We are inclined to admit the additional ground for adjudication.

7. Before we proceed to decide the issue, it is necessary to deal with the basic facts. By virtue of order dated 14.01.2011 passed by the Hon'ble Bombay High Court, BASF Coatings (India) Private Ltd. and BASF Polyurethanes India Ltd. amalgamated (merged) with BASF India Ltd. As per the scheme of amalgamation approved by the Hon'ble Bombay High Court, the amalgamation was effective from 1<sup>st</sup> April, 2010. After the decision of the Hon'ble Bombay High Court approving the amalgamation of the aforesaid two companies with the present appellant, which happened after filing of return of income for the assessment years under dispute in the present appeals, the assessee on 8<sup>th</sup> March, 2011 intimated in writing to the Assessing Officer about the fact of amalgamation of the two entities with BASF India Ltd. Along with the said

letter, the assessee also enclosed copy of the order passed by the Hon'ble Bombay High Court approving amalgamation. In spite of such intimation by the assessee, the Assessing Officer not only proceeded to pass the draft assessment orders in the name of the erstwhile companies but also proceeded to pass the final assessment orders in the name of the erstwhile companies. To be precise, against the name of the assessee in the assessment orders. The Assessing Officer mentioned as under:-

- (i) M/s BASF Coatings India Pvt. Ltd. (now merged with BASF India Ltd.)
- (ii) M/s BASF Polyurethanes India Ltd. (now amalgamated into M/s BASF India Ltd.)

8. Thus, as could be seen from the impugned assessment orders, the Assessing Officer has mentioned the names of the erstwhile entities followed by the name of the amalgamating company. Even, the demand notice has been issued only in the name of the amalgamated company. Therefore, the issue before us is, whether the assessment orders passed in such a manner are legal and valid. The issue relating to the validity of orders passed in the name of non-existing entities has come up for judicial scrutiny in various cases. However, at present, the issue is no more res-integra as the Hon'ble Apex Court in the case of PCIT vs. Maruti Suzuki India Ltd. (supra) has set the dispute at rest. As could be seen from the factual matrix of M/s Maruti Suzuki India Ltd. (supra) case, the Assessing Officer passed the final assessment order by mentioning the name of the assessee as under:-

“M/s Suzuki Powertrain India Ltd. (amalgamated with M/s Maruti Suzuki India Ltd.)”

9. The aforesaid factual position has been clearly captured in paragraph 15 of the decision rendered by the Hon'ble Apex Court in the case of M/s Maruti Suzuki India Ltd. Thus, viewed in the aforesaid context, it is very much clear that the facts involved in the present assessee's case are identical to the facts involved in the case of M/s Maruti Suzuki India Ltd. (supra). While dealing with the issue of validity of the assessment order passed in the name of the erstwhile company followed by the name of the amalgamating company,

The Hon'ble Supreme Court held the assessment order to be invalid as it was passed the name of a non-existing entity. Thus, as could be seen, the facts are no different in case the present assessee as well, as, the Assessing Officer has passed the assessment orders in the name of the erstwhile companies. Though, of course, he has also mentioned the name of the amalgamating companies afterwards. However, that will not validate the orders in view of the decision of the Hon'ble Supreme Court in the case of M/s Maruti Suzuki India Ltd. (supra). Therefore, the assessment orders passed by the Assessing Officer have to be declared as invalid and quashed. Accordingly, we do so. The additional grounds are allowed.

10. As we have quashed the assessment orders while deciding the additional ground, the other grounds raised by the assessee having become infructuous do not require adjudication.

11. In the result, appeals filed by the assessee are allowed as indicated above.

Order pronounced in the open court on 22th October, 2020.

*Sd/-*  
(N.K. PRADHAN)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 22/10/2020

Alindra, PS

*Sd/*  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

**आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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